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Th7d



Filed:	11/18/03
49th day:	1/6/04
49-day waiver:	11/6/03
Staff:	SM-SC
Staff report:	3/25/04
Hearing date:	4/15/04
Hearing item number:	Th7d

APPEAL STAFF REPORT - SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....A-3-SLO-03-113, Los Osos Wastewater Treatment Facility

Applicant.....Los Osos Community Services District

AppellantsConcerned Citizens of Los Osos, Citizens for an Affordable and Safe Environment, Dr. Pravin G. Bhuta

Local governmentSan Luis Obispo County

Local decisionApproved with Conditions on October 21, 2003. (Findings and Conditions attached as Exhibit 1.)

Project description.....Construct and operate a wastewater treatment system to serve areas of Los Osos, Baywood Park, and Cuesta-by-the-Sea.

Project locationTreatment facility at Ravenna Avenue and Los Osos Valley Road (11-acre “Tri-W” site); collection and disposal facilities, and harvest wells to manage groundwater levels, distributed throughout the South Bay Urban area, as shown by Exhibit 2.

File documents.....San Luis Obispo County Certified Local Coastal Program (LCP); San Luis Obispo County Development Plan Application File No. D020283D; San Luis Obispo County Local Coastal Program Amendment File 3-01; Appeal File A-3-SLO-97-040 (San Luis Obispo County’s former application for a Wastewater Treatment Facility to serve the Los Osos area).

Staff recommendation ...No Substantial Issue

Summary of staff recommendation: The development of a wastewater treatment system to replace existing septic systems in the low-lying areas of Los Osos is necessary to protect the water quality of the Morro Bay National Estuary and the Los Osos groundwater basin. In response to Central Coast Regional Water Quality Control Board (RWQCB) Order 83-13 prohibiting septic discharges, San Luis Obispo County initiated efforts to analyze alternatives, evaluate impacts, and design a wastewater treatment facility. Local approval of the County designed facility was appealed to the Coastal Commission in 1997. The Commission continued action on that request, among other reasons, to provide the Community with the opportunity to form its own services district and pursue alternatives. The treatment alternative favored at that time was a ponding system at the downtown “Tri-W” site.

The Los Osos Community Services District (LOCSO) was formed in 1998, and was soon forced to



California Coastal Commission

April 15, 2004 Meeting in Santa Barbara

Staff: SM Approved by:

abandon the ponding option due to technical concerns regarding nitrogen removal, and the amount of land required. The LOCSD considered a wide range of alternatives and in March 2001, certified an Environmental Impact Report (EIR) identifying the use of a conventional treatment plant on the Tri-W site as the preferred project. Although it was not identified as the environmentally superior alternative, the LOCSD selected the Tri-W site for reasons related to cost and the objective of providing centrally located parks and open space facilities. Subsequently, the Coastal Commission evaluated siting issues in August 2002, and approved LCP Amendment 3-01, establishing public facilities including the wastewater treatment plant as an allowable use on the Tri-W site.

On October 21, 2003, the County approved a coastal development permit for LOCSD's preferred project, which includes a wastewater collection system, a treatment plant, and an effluent disposal system. The approved project also includes "harvest wells" to manage groundwater levels. Please see Exhibit 2 for a map depicting the location of these project elements.

The appeals of the County's approval, attached as Exhibit 3, raise a wide range of concerns regarding the impacts of the proposed facilities. The Commission's standard of review, however, is limited to issues regarding the project's consistency with the San Luis Obispo County certified Local Coastal Program (LCP) and the public access policies set forth by the Coastal Act (Coastal Act Section 30603). Coastal Act Section 30412, referenced by LCP Public Works Policy 9, further specifies that the review of coastal development permits for treatment works shall be determinative only with respect to siting, visual appearance, capacity and service area. Within this context, contentions of the appeals that are relevant to the Commission's review of the permit include those that assert the location and visual impacts of the project are inconsistent with LCP coastal resource protections, and allegations that the treatment capacity and service area are inadequate. Staff recommends the Commission determine that these contentions **do not raise a substantial issue** for the reasons summarized below and detailed in the findings of this report.

LCP Issues	Appellants' Contentions	Analysis
<u>Project Siting</u>		
Environmentally Sensitive Habitat Areas (ESHA)	<p>Project involves development in ESHA that is not resource dependent and will result in significant disruption of ESHA;</p> <p>Mitigation ratios are not adequate;</p> <p>Maintenance of leach lines will impact ESHA /mitigation area;</p> <p>Project approved prior to the</p>	<p>The County approval is consistent with LCP Amendment No. 3-01, which authorizes the construction of a treatment plant at the proposed site and establishes ESHA mitigation requirements, including protection and enhancement of habitat at the primary disposal site that takes into account leach line maintenance.</p> <p>Conditions 73 and 74 of the County permit prohibit new development in the</p>



	<p>completion of a Habitat Conservation Plan (HCP);</p> <p>Decommissioning of septic tanks may adversely impact wetlands;</p> <p>The Andre site provides a feasible alternative for the treatment plant that would not impact ESHA.</p> <p>Changes in the project since CCC approval of LCPA 3-01, deleting public amenities and revising building designs, conflict with the amendment's premise that a downtown location would serve community needs.</p>	<p>prohibition area until the HCP is complete.</p> <p>Although some local alterations in groundwater levels may occur, no net loss of wetland habitat is anticipated. Monitoring wells and operation adjustments will be used to manage groundwater levels and avoid such impacts.</p> <p>The Andre site has been rejected by the LOCSD due to cost, location, and other concerns.</p> <p>There have been no significant changes to the project since LCPA 3-01 was approved. The County approved project includes equivalent park and opens space areas. Minor building modifications will not increase impacts on coastal views.</p>
Visual Resources	The treatment plant has not been sited to protect scenic coastal views	The siting of the treatment does not raise substantial visual impacts because the design and terms of the County's approval will preserve the scenic quality of the area.
Archaeological Resources	Project poses significant impacts to archaeological resources that have not been adequately addressed.	Surveys of the treatment site and Broderson disposal site did not reveal the presence of archaeological resources. A mitigation program to address potential impacts has been prepared in accordance State Historic Preservation Office and LCP requirements.
Water Quality	The proximity of the treatment plant to Morro Bay poses risks to coastal water quality and marine habitats due to the potential for sewage spills, drainage problems, and	The treatment facility includes features to: manage stormwater during and after construction; prevent and control sewage spills; generate backup electricity; and withstand seismic forces. The terms of



	inadequate removal of hazardous wastewater constituents. Project construction and community buildout will result in erosion and sedimentation.	County and RWQCB approval require the preparation of emergency response and hazardous materials management plans. Water quality impacts associated with community buildout are addressed by LCP development standards.
Land Use Compatibility	The downtown location of the treatment plant is incompatible with surrounding land uses due to the odors, noise, dust, and health and safety risks generated by treatment plant construction and operation.	The treatment site was selected to serve the dual purpose of providing centrally located parks and open space. The local approval includes measures to prevent odors, contain hazardous materials, and minimize impacts of noise and dust consistent with LCP requirements.
Hazards	The treatment plant will contain hazardous materials and is in an inappropriate location for a hazardous industrial facility due to surrounding development, geologic hazards, and hazards associated with the hauling of sludge.	In accordance with LCP land use designations, the treatment plant is a Public Facility located on a site designated for such uses. Geologic hazards have been evaluated and addressed. A hazardous materials management plan requires proper containment of diesel fuel and treatment chemicals. Transport of sludge from the treatment plant is less hazardous than the current practice of transporting untreated sludge from septic tanks.
Access and Recreation	The project no longer provides the public amenities that were the basis for a downtown location. There is no parking or public restrooms to serve public access and recreation. Project construction and operation (i.e., sludge hauling) will adversely impact traffic and circulation.	The treatment facility continues to provide over 8 acres of public park and open space area. The County approval requires 11 public parking spaces on Ravena Avenue. Additional parking and public facilities may be provided in the future. County conditions regulate construction traffic in a manner that will avoid interference with coastal access and recreation. Sludge hauling is estimated to require 5-8 trucks trips per week, which will not impact public access and recreation.
<u>Visual Appearance</u>	Treatment plant buildings will block	The treatment facility has been sited and



	<p>scenic coastal views and be incompatible with the scale of adjacent development. Treatment plant construction requires excessive grading, landform alteration, and vegetation removal. Changes to the project since the Commissions approval of LCP Amendment 3-01 have resulted in increased impacts to visual resources.</p>	<p>designed to minimize impacts on coastal views, among other was by locating the aeration basin below ground, and limiting the height of treatment building to no more than 15 feet above the elevation of Los Osos Valley Road. Grading and vegetation removal is limited to that which is necessary to accommodate the project and minimize impacts on public views. County conditions require landscaping, visual screening, and other visual resource protection measures to preserve scenic coastal views across the treatment site. Modifications to treatment facility plans since Commission approval of LCP Amendment 3-01 do not result in a substantive change in visual impact.</p>
<p><u>System Capacity and Service Area</u></p>	<p>The treatment plant site does not have adequate space to accommodate future expansions that will be necessary to serve areas outside the RWQCB prohibition area that are contributing to groundwater pollution problems.</p>	<p>The purpose of Coastal Act and LCP provisions regulating system capacity and service area is to prevent new public works facilities from inducing growth beyond that which is anticipated by the certified LCP. In this case, the service area and treatment capacity of the wastewater treatment facility is within the location and extent of urban development authorized by the LCP, and according to the RWQCB, is adequate to address groundwater pollution problems.</p>



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1. Appeal of San Luis Obispo County Decision

A. San Luis Obispo County Action

San Luis Obispo County approved this proposed project subject to conditions on October 21, 2003 (see Exhibit 1 for the County's adopted findings and conditions on the project). The County's approval was by the Board of Supervisors following an appeal of the Planning Commission's original approval. Notice of the Board of Supervisor's action on the coastal development permit (CDP) was received in the Coastal Commission's Central Coast District Office on November 3, 2003. The Coastal Commission's ten-working day appeal period for this action began on November 4, 2003 and concluded at 5pm on November 18, 2003. Three valid appeals (see below) were received within the appeal period.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is a major public works project, and involves development between the first public road and the sea as well as within 100 feet of a wetland.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project involves development between the nearest public road and the shoreline, and thus, this additional finding is required.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal should the Commission assert



jurisdiction over the project.

C. Appellants' Contentions

Please see Exhibit 3 for a copy of the submitted contentions of appeal, which are summarized below. Many of the appeal contentions are not within the grounds established by Coastal Act Section 30603 (described above). Such contentions are demarked by an “*”, but are nonetheless addressed in the findings of this report.

1. Appeal of Dr. Pravin G. Bhuta

Dr. Bhuta's appeal:

- a. objects to the impact of the wastewater treatment plant on views of Morro Bay, particularly views of Morro Rock from Los Osos Valley Road;
- b. raises concerns about harmful discharges to Morro Bay caused by flooding of the proposed treatment plant, power outages, and incomplete removal harmful substances found within wastewater;
- c. contends that the location of the treatment plant is incompatible with adjacent residential and community facilities.

2. Appeal of Concerned Citizens of Los Osos (CCLO)

The appeal filed by CCLO contends:

- a. * The Coastal Development Permit (CDP) approved by the County improperly applies the resource protection standards of Chapter 3 of the Coastal Act. Coastal Act standards must be applied in addition to LCP requirements due to the outdated nature of the LCP's existing Estero Area Plan and unresolved issues related to the Commission's Periodic Review of the San Luis Obispo County LCP. In this regard, the appeal asserts that the project is inconsistent with Coastal Act Sections 30001.5A and B, 30108, 30240 A and B, 30244, 30250 B, and 30251. The basis for these and other contentions are summarized below.
 1. The locally approved project is inconsistent with Section 23.08.288 of the San Luis Obispo County Coastal Zone Land Use Ordinance (CZLUO) setting forth standards for the development of a Public Utility Facility. Specifically, the proposed treatment plant location is inconsistent with the requirement to avoid sensitive areas given the availability of a feasible alternative site that is not sensitive (i.e., the Andre property).
 2. The treatment plant buildings range from 35 to 38 feet in height, inconsistent with the neighborhood scale, and will obstruct views of Morro Bay. This also conflicts with the project description contained in the Environmental Impact Report (EIR), describing the



treatment facility as a buried plant with approximately three quarters of the facility being located below grade. Actual visual impacts will interfere with the public viewshed, in violation of the Coastal Act. Treatment Plant buildings will obstruct scenic views of Morro Bay, Morro Rock, and the Irish Hills. Grading of the treatment site will result in landform and viewshed alterations that are incompatible with the neighborhood character.

3. The County approval is inconsistent with Section 23.05.024 regarding Grading Plans.
4. * It is premature to approve the project until California Cities Water Company and Southern California Water Company legal challenges to the disposal standards established by the Regional Water Quality Control Board (RWQCB) are resolved. Resolution of these lawsuits may require additional wastewater treatment such as reverse osmosis and/or advanced oxidation that would add to project costs, energy use, and environmental impacts that have not been addressed. For example, the use of reverse osmosis would result in a 30% waste stream of brine byproduct, and generate impacts that have not been addressed (e.g., impacts associated with brine drying beds or hauling untreated brine to Ventura County).
5. The project does not include an emergency response plan to address mechanical malfunction, vandalism, or natural disaster, and does not ensure the health and safety of Los Osos residents and visitors. The project does not provide the 18 hours of emergency storage stated in the EIR, and does not adequately address impacts associated with potential sanitary sewer overflows, such as impacts to a nearby well. Use of treated effluent to irrigate landscaping at the treatment plant site also has the potential to impact this well.
6. * The cost of the project and its economic impact on residents and property owners has not been adequately addressed or equitably distributed. Variables in sludge treatment and disposal, as well as additional costs associated with cultural resource protection, further wastewater treatment, handling of water from harvest wells, and addressing the requirements of the National Environmental Protection Act (NEPA) have not been accounted for.
7. The location of the treatment plant is inconsistent with standards that limit development in environmentally sensitive habitat areas (ESHA) to resource dependent uses, and that prohibit a significant disruption of ESHA. It is improper to allow the treatment plant in ESHA in order to balance a conflict with the need to protect marine resources and coastal water quality because there is an alternative site available that does not contain ESHA. In addition, the decommissioning of septic tanks may adversely impacts wetlands and riparian corridors through changes in hydrology.
8. The treatment facility is not compatible with surrounding land uses and community facilities (e.g., library, park, community center, church, school). The location of the treatment plant does not comply with Section 23.08.074(3) of the CZLUO, which states that schools should not be located any closer than one thousand feet to an industrial or commercial service category, or with LCP standards for the protection of historic resources, due to its proximity to the Historic Los Osos Schoolhouse. Locating the treatment facility in the center of town



also poses health and safety risks, as well as odor problems, inconsistent with Section 23.06.084 of the CZLUO. Proposed odor controls have not been tested. The park facilities identified on the plans for the treatment plant will have little benefit to the community due to the lack of a public restroom and inadequate parking. Locating a park adjacent to a treatment facility also exposes the public to hazards. There is a feasible, less-environmentally damaging alternative for the treatment plant that would be more compatible with surrounding land uses than the proposed site.

9. The project is inconsistent with requirements to protect archaeological, paleontological, and historic resources. Potential impacts to archaeological resources have been underestimated, and provisions for monitoring such impacts are inadequate. The costs, logistics, responsibility, and interagency coordination associated with archaeological monitoring have not been effectively addressed.
 10. The treatment plant is a hazardous industrial facility that should be located outside of the urban reserve line, on a larger parcel of land that has adequate space to handle sewer sludge treatment needs. Relocating the treatment facility to a larger site would also enable future expansion. The proposed treatment plant site is limited by its size and drainage constraints to accommodate additional treatment and/or expansion that may be necessary to serve portions of the community outside of the septic tank prohibition zone in the future.
 11. * Changes in the project require a supplemental EIR. These changes include the use of drywell vertical disposal; an increase in harvest water withdrawals from 400 to 650 gallons per day; differences in the classification and handling of sewage sludge.
 12. * The County approval does not adequately address environmental impacts associated with the handling of sewage sludge; the logistics and environmental impacts associated with the handling of septage from the decommissioned septic tanks; the use of treated water for irrigation; treatment and/or blending of upper aquifer water for use as drinking water; the potential need for individual homeowners to obtain NPDES permits for lateral connections.
 13. The construction of the wastewater treatment infrastructure, and the buildout of the community that will be facilitated by the treatment facility, will result in polluted runoff and interrupted traffic circulation.
 14. The mitigation proposed for the loss of habitat attributable to the construction of the treatment facilities is not adequate. A 4:1 mitigation ratio will not be achieved, and the use of the mitigation site for effluent disposal will degrade this habitat area. The extent of habitat impacts from ancillary facilities have not been quantified or adequately mitigated. The mitigation site does not provide like for like habitat. The Community Habitat Conservation Plan has not been completed.
- b. In an addendum to the CCLO appeal, the appellants assert that there are changed circumstances since the Coastal Commission approved the LCP amendment authorizing the construction of the



wastewater treatment plant at the proposed location. The addendum contends that the previously stated reasons for selecting the proposed Tri-W site over the environmentally superior Andre site are no longer valid. Specifically, CCLO references the Final EIR, which rejected the Andre site because it did not meet the objectives of the project, including affordability, proximity to the community, and opportunities for community assets (parks and offices). CCLO asserts that these objectives are obsolete and no longer valid for the following reasons:

1. * “CCLO contends the cost of purchasing the Andre site was under \$1 million and needing little-to-no ESHA mitigation. The real estate, environmental, and drainage mitigation cost savings would easily offset the extra piping and pumping associated cost increase of the added one-mile distance. The cost of Tri-W was \$3 million and the mitigation cost for damaging Tri-W cost an additional \$4 million. (No figures added for noise, odor, visual impact, or community acceptance).”
 2. “In the August 2002 testimony [to the Coastal Commission regarding the LCP Amendment] by LOCSD Board President, Rosemary Bowker, described the proposed sewer plant as “buried with park amenities.” When in fact, the sewer plants “amenities” have been stripped from the current proposal at 90% design.” In support of this contention, the addendum states that the previously proposed retention pond, that was to be available for public uses park and open space, is now a detention basin that will retain storm water, be used as a sewage overflow holding area, and surrounded by a chain link fence. According to the addendum, other amenities that have been removed from the plan include Riparian, Demonstration, Water, and Community Garden/s; Court Yard and Amphitheater; CSD Offices; Picnic Area and Tot Lot; Parking and Drop off areas; and regulation soccer field. The addendum also questions the public’s ability to use and enjoy the open space Multi-Use Area, which doubles as a 15 foot deep retention basin, due to periodic covering with storm water, and the lack of stairs, ramps, handrails, parking, restrooms and facilities for the disabled.
- c. The addendum to the appeal further asserts that the design of the project approved by the County is different from the project presented to the Commission during the August 2002 hearing on the LCP amendment for the following reasons:
1. “The sewer plant no longer meets the project description as defined in the Final Environmental Impact Report (FEIR) as “buried,” “roof tops only,” and “below (or at) grade.” The Wastewater Facilities Project (WFP) report page 4-13 described, “The solids processing facilities would consist of a two story building.” The building currently, at ninety percent design, proposed is thirty-eight feet tall, equivalent [to] three stories. It is also described; “the estimated size of the building is 40 ft. by 100 ft.” when the current ninety percent proposal has the building at 121 ft. by 89 ft.”
 2. “The proposed buildings have changed since the August 8, 2002, LCP Amendment. Some larger, some smaller, some removed, all renamed, and all are at a higher elevation than approved at that time. For example, one of thirty-seven recommended changes by Boyle



engineering during the value engineering process and adopted by the LOCSD board on June 19, 2003, eliminated the cost of hauling a portion of the 196,000 cubic yards of Tri-W soil away and saving an estimated \$600,000. The soil will now serve as base under the sewer plant, raising the entire courtyard and buildings a full three feet above the current grade, which raises additional erosion and sedimentation concerns as well as adding to the overall height of the project, further obstructing the view of Morro Bay.”

3. Maintenance requirements on top of the aeration basin “including workmen, machinery, and equipment, will be visible from homes south of the facility, upslope from the site. This activity is inconsistent with the “park like” promise of the district at the LCP amendment approval. CCLO questions the aesthetics of the area atop the aeration basin; what material (lawn, gravel, concrete) will this be covered with and how will it be maintained?”
 4. Newly identified fencing details will increase the impact of the facility on public views of Morro Bay, Morro Rock, and the Morro Bay Sandspit and Estuary.
- d. The addendum to the CCLO appeal also includes the following additional concerns in support of their contention that the current project is different from the one presented to the Commission in August 2002 and that a subsequent EIR is required:
1. Statements made by the LOCSD Board President regarding the Pacifica treatment plant during the August 2002 hearing were inaccurate.
 2. According to a November 6, 2003 study, there are problems with the ability of the primary site for treated wastewater disposal to accommodate expected volumes. This study indicates that areas outside of the septic tank prohibition area are contributing to groundwater nitrate problems and will require sewer service in the future.
 3. The Dog Park has been reduced in size from 1 acre to 0.6 acres.
 4. The classification and moisture content of sewage sludge has changed, which will result in tripling the sludge truck traffic through downtown Los Osos.
 5. * The treatment method has been modified. The cost, maintenance needs, and environmental impact of the MBR and centrifuge technology currently proposed have not been evaluated.
 6. * The treatment system has not been designed to accept and treat septage from the North Coast Area of the County, inconsistent with the recommendations of the Board of Supervisors subcommittee.
3. Appeal by Citizens for an Affordable and Safe Environment (CASE)
- a. The appeal by CASE contends that the project violates Coastal Act Section 30240*, as well as the following sections of the Coastal Zone Land Use Ordinance:



1. 23.07.104b requiring preliminary site surveys for archaeological resources within designated Archaeological Sensitive Areas.
 2. 23.07.160 regarding Sensitive Resource Areas, because the treatment plant site has not been mapped as a sensitive resource area as requested by the Coastal Commission, because the development of the treatment plant and disposal field will result in the removal of 100 trees that provide raptor, bird, and monarch butterfly habitat, and because these impacts could be avoided by locating the treatment plant on the Andre site.
 3. 23.05.039 regarding Nuisance and Hazard Abatement, because the impacts of noise and dust on the town could be avoided by locating the treatment plant on the Andre site.
 4. 23.05.040, .044, and .046 regarding Drainage, because it is unlikely that a drainage plan was approved prior to approval of the Land Use Permit, and because there is inadequate drainage at the treatment plant site.
 5. 23.04.160-170 regarding Parking, because there is inadequate parking (an public restrooms) to serve visitors to the dog park and sewer
 6. 23.06.084 regarding Odors, because it is unrealistic that treatment system can operate without producing odors that will affect surrounding residences and the downwind center of town. Odor from bio-filter cleaning and clogging has not been evaluated.
 7. 23.06.120 – 126 regarding Toxic and Hazardous Materials, Explosives Storage, and Flammable and Combustible Liquids Storage, because explosives/flammables will need to be stored at the treatment site to provide emergency power, and dues to the storage of large amounts of industrial chlorine and other toxics. Appellants raise concern regarding terrorist threats and adequate security, and question whether the required Health Department Permit has been obtained.
 8. 23.02.010c and d (Title and Purpose) because the proposed treatment site is incompatible with surrounding land uses, and will adversely affect historical, visual, cultural, archaeological, and recreational resources.
 9. 23.07.084.c.4 requiring land use permit applications for development in a Geologic Study Area to be accompanied by a geology report that address liquefaction hazards. Appellants question whether the required report has been provided, and note the presence of an earthquake fault within one quarter of a mile of the treatment site.
 10. 23.04.430 a and b requiring adequate water and sewage disposal capacity for proposed development, because there is inadequate potable water supplies available for sewer workers and for the buildout of the community.
- b. Additional contentions contained in the attachments to the CASE Appeal raise many of the same concerns of the CCLO appeal described above, such as those regarding:



1. * Unresolved issues related to Cal Cities Water Company's legal challenge to RWQCB Waste Discharge Standards;
 2. The incomplete status of the Habitat Conservation Plan (HCP);
 3. The availability of a less damaging feasible alternative for the treatment plant;
 4. * The outdated status of the County's LCP;
 5. The inadequacies of the proposed mitigation for the loss of habitat on the treatment site;
 6. Visual impacts of the treatment plant;
 7. Risks of sewage spills and overflows;
 8. Sources of polluted runoff;
 9. * The need for additional CEQA review;
 10. Increased amounts of harvest well production, and unresolved issues related to the disposal of this water;
 11. Changes in sludge classification and associated increases in sludge hauling;
 12. Changes to the treatment system since the Community originally endorsed the proposed location;
 13. Impacts to cultural resources associated with individual connections to the system;
 14. * Economic impacts and unresolved issues related to project cost;
 15. Impacts of the disposal system on drinking water supplies and groundwater hydrogeology;
 16. Impacts to transportation and circulation.
- c. Other contentions contained in the attachments to the Case Appeal include:
1. County approval of the project at 30% design is premature;
 2. The project will not meet the stated goals of the project, such as providing a safe groundwater basin yield to support community buildout;
 3. A STEP/STEG method of collection and treatment is environmentally superior;
 4. * The March 2003 Addendum to the Project EIR does not satisfy CEQA requirements – a supplemental or subsequent EIR is required;
 5. * NEPA review of the project has not taken place, but is required, because the project



involves the use of federal funds;

6. * The cost of the project conflicts with Clean Water Act requirements that projects be reasonable and affordable in their expense, as well as with environmental justice laws that prohibit projects that would disproportionately impact persons based on race religion, or income.
 7. The proposed gravity collection system will disturb known archaeological resources in violation of Chapter 8 of the LCP.
 8. The proposed disposal system will increase the potential for liquefaction, surface erosion, underground gulying, groundwater mounding, and daylighting of effluent.
 9. * The project will not adequately remove TOC's, VOC's, carcinogens, human viruses and endocrine disruptors, and will therefore not achieve a safe or sustainable source of potable water.
 10. * The use of treated effluent and harvest well water for irrigation poses human health risks.
 11. The plant does not have adequate capacity to effectively treat wet weather volumes of wastewater and harvest well water.
- d. Finally, the CASE appeal raises the following additional concerns regarding alleged changes to the project since the Final EIR was approved:
1. * Switching to the MBR method of treatment will significantly increase energy costs and maintenance needs, and does not ensure effective nitrogen removal;
 2. The treatment building has been moved closer to the church;
 3. The increased trucking of sludge through town has double the risk of exposure to spore borne disease;
 4. * The lift system component of the collection system has been altered by 37% without a study of collection system efficiency.

2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. I move that the Commission determine that Appeal Number A-3-SLO-03-113 raises **no**



substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue. Staff recommends a **yes** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue. The Commission hereby finds that Appeal Number A-3-SLO-03-113 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Background

Much of the South Bay urban area, which includes the residential communities of Los Osos, Baywood Park, and Cuesta-by-the-Sea, was platted in the late 19th Century, with approximately 5,000 small lots intended for summer homes and retreats. Many of these lots are only 25 or 37 feet in width and 125 feet in length. As the resident population increased from approximately 600 in 1950 to the current level of approximately 15,000, so has the number and intensity of septic systems.

The Central Coast Regional Water Quality Control Board (RWQCB) and other health agencies became concerned with the use of individual disposal systems (i.e., septic systems) in the early 1970's when it was identified that the depth to groundwater is shallow enough in some areas to flood leach fields in wet weather, posing adverse impacts to Morro Bay associated with surface flow and lateral seepage of inadequately treated wastewater. Significant concern was also raised regarding the impacts of septic systems on groundwater resources, particularly the fact that the Los Osos area obtains its water supply from groundwater aquifers. In the Baywood Park area, few of the systems can meet the RWQCB's criteria for separation between the bottom of a leach field and ground water. Furthermore, many of the smaller lots are too small for leach fields, and as a result, utilize deeper seepage pits which may discharge directly to ground water.

To address these concerns, an interim Basin Plan adopted by the RWQCB in June 1971 contained a provision prohibiting septic system discharges in the area after 1974. In September 1983, the RWQCB adopted Resolution 83-13, also prohibiting sewage disposal systems discharges, which took effect in 1988.

In 1990, the Coastal Commission approved an amendment to the Estero Area Plan allowing a wastewater treatment plant proposed by the County Engineering Department on rural agricultural land off Turri Road. The County later abandoned this site in favor of the Pismo site, located at South Bay Boulevard and Pismo Avenue, on which the County approved a wastewater treatment plant in 1997.



The locally approved coastal development permit authorizing the County project was appealed to the Coastal Commission, and the Commission conducted four public hearings on the project between 1997 and 1998. The Commission continued action on the County project, among other reasons, to provide the community with an opportunity to pursue alternatives.

A November 1998 local ballot measure for the formation of the Los Osos Community Services District (LOCSD) was approved by an 85% vote. At that time, the alternative favored by the elected district members was a ponding system at the downtown Tri-W site. The ponding system was later rejected, however, because there was insufficient data to demonstrate that it would effectively remove nitrogen. On March 1, 2001, the LOCSD certified a Final Environmental Impact Report for preferred alternative involving a conventional treatment system at the Tri-W site. In August 2002, the Commission approved a Local Coastal Program amendment that authorized wastewater treatment and associated facilities as allowable uses on the Tri-W site. On October 21, 2003, San Luis Obispo County approved the coastal development permit for the construction and operation of the entire wastewater system that are the subject of these appeals (County Findings and Conditions of Approval attached as Exhibit 1, Project Plans and Location attached as Exhibit 2).

B. Project Location and Description

The project involves a wastewater collection, treatment, disposal, and recycling system to serve the communities of Cuesta-by-the-Sea, Baywood Park, and Los Osos. Please see Exhibit 2 showing the location of these facilities.

Treatment System

As approved by San Luis Obispo County, the treatment facility will be located at the 11 acre Tri-W site, at the intersection of Ravenna Avenue and Los Osos Valley Road, adjacent to the Community Library and across the street from the Los Osos Community Center. The facility will provide tertiary treatment, and has been sized to process the amount of wastewater expected from the buildout allowed by the Estero Area Plan, estimated to be a population of 18,428. The treatment facilities will occupy 4-5 acres of the site, with the remainder being devoted to landscaped open space.

The LOCSD describes the Wastewater Facility treatment plant site as a multi-use facility intended to benefit the entire Los Osos/Baywood Park community by providing a state of the art wastewater treatment plant in a park like setting. The treatment facility consists of two major components, the principal treatment areas, which are buried beneath the park; and a cluster of buildings that include final treatment and processing, lab facilities, visitor and operations space and maintenance facilities. The buildings are clustered in the northwest corner of the property in a low area set into the natural grade so that only a portion of the roofs are visible from Los Osos Valley Road. Approximately three-quarters of the treatment facility will be located below the elevation of Los Osos Valley Road, thereby minimizing visual impacts, and creating additional area for recreational uses. Vehicular access to the treatment facility by employees, visitors and the septage and sludge trucks will be directly from the northerly extension of Ravenna Avenue. The bio-filter/odor scrubber is located near the underground portion of



the treatment facility, separating the more active park and play fields from uses on top of the treatment facility structure.

Constructing the treatment plant underground provides an opportunity for much of the site to be landscaped or otherwise improved to provide an open space and recreation amenity for the community. The site plan (Exhibit 2) incorporates an off-site drainage percolation area that can be used in dry weather as a large grass area suitable for youth soccer or other types of active recreation. The site will also incorporate a system of pedestrian/bicycle trails, seating areas, and a fenced dog park. Lighting is only provided for safety/security purposes at the treatment plant and for selected walkways. The landscape plans will incorporate native, drought-tolerant buffer planting around entire site, and a dry stream feature.

In addition, a stormwater retention basin is provided in the northwest corner of the site, which is designed to accept runoff expected from a 50-year storm. The retention system also provides for up to 8 hours of emergency storage in the event of an overflow from the treatment plant.

A Class I bicycle path will be installed along Los Osos Valley Road and a two-thirds street construction of Ravenna Avenue north of Los Osos Valley Road along the property frontage to provide direct access to the treatment plant site.

Collection System and Septic System Management

Wastewater will be collected from the entire RWQCB prohibition area through a series of gravity and pressurized sewer lines totaling approximately 197,000 feet. The collection system also involves seven pump stations and 12 pocket pump stations. The LOCSD will operate a Septic System Maintenance and Management Program (SSMP) for all areas within the Urban Reserve Line \ outside the prohibition area. Septage received from the SSMP service area will be received and treated at the treatment plant. Sludge produced from the treatment process will be hauled to approved sludge disposal sites.

Disposal System

Disposal of the highly treated wastewater effluent will take place in percolation sites (leach fields) located throughout the community that have more than a 30 foot depth to groundwater, using horizontal perforated pipe, vertical disposal wells, and landscape irrigation. The largest of these leachfields is located at Highland Drive and Broderson Avenue (the Broderson site), where 50% of the effluent (800,000 gallons per day) will be discharged.

Harvest Wells

To prevent groundwater mounding (i.e., localized increases in groundwater levels), the District will employ six harvest wells to withdraw up to 650,000 gallons per day from the upper aquifer. This harvest water will be used in the following ways: blended with lower aquifer water as part of the community's drinking water supply; used for landscape irrigation; disposed of within approved percolation sites; routed to the treatment plant for additional treatment; or discharged to Morro Bay using two existing stormwater drainage pump stations.



Construction

Construction of the project is planned to begin in 2004 and be completed in 2006. The wastewater project will be constructed in two phases over a 24-month period. Individual property owners will be responsible for the de-commissioning their septic tanks, the installation of on-site collection laterals and for the replacement of plumbing fixtures with water conserving fixtures. Septic tank de-commissioning involves pumping the tank out, removing the top of the tank and backfilling the tank with sand or slurry.

C. Substantial Issue Analysis

1. Policy Framework

a. Coastal Act and LCP Policies

As previously described, the grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. In the case of treatment works, the Commission's standard of review is further refined by Coastal Act Section 30412, which states:

(a) In addition to Section 13142.5 of the Water Code, this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.

(c) Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be reviewed by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of the development:

(1) The siting and visual appearance of treatment works within the coastal zone.



(2) The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent with this division.

(3) Development projections which determine the sizing of treatment works for providing service within the coastal zone.

The commission shall make these determinations in accordance with the policies of this division and shall make its final determination on a permit application for a treatment work prior to the final approval by the State Water Resources Control Board for the funding of such treatment works. Except as specifically provided in this subdivision, the decisions of the State Water Resources Control Board relative to the construction of treatment works shall be final and binding upon the commission.

(d) The commission shall provide or require reservations of sites for the construction of treatment works and points of discharge within the coastal zone adequate for the protection of coastal resources consistent with the provisions of this division.

(e) Nothing in this section shall require the State Water Resources Control Board to fund or certify for funding, any specific treatment works within the coastal zone or to prohibit the State Water Resources Control Board or any California regional water quality control board from requiring a higher degree of treatment at any existing treatment works.

The above Coastal Act Section is referenced in LCP Policy 9 for Public Works as follows:

Policy 9: Review of Treatment Works

For Any development that constitutes a treatment works (PRC 30120)¹, issuance of a permit shall be consistent with the certified LCP and PRC 30412 and shall address the following aspects of such development:

- a. The siting and visual appearance of treatment works within the coastal zone.*
- b. The geographic limits of the service area within the coastal zone which is to be served by the treatment works and the timing of the extension of services to allow for phasing of development consistent with the certified LCP.*
- c. Projected growth rates used to determine the sizing of treatment works.*

[THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD]

¹ Section 30120 provides: "Treatment works" shall have the same meaning as set forth in the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and any other federal act which amends or supplements the Federal Water Pollution Control Act.



b. Discussion:

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. In addition, Coastal Act Section 30412, referenced by LCP Public Works Policy 9, specifies that the review of coastal development permits for treatment works shall be determinative only with respect to siting, visual appearance, capacity and service area. Within this context, contentions of the appeals that are relevant to the Commission's review include those that assert the location and visual impacts of the project are inconsistent with LCP coastal resource protections, and allegations that the treatment capacity and service area are inadequate. Many of the appeal contentions fall outside of the Commission's appeal jurisdiction prescribed by Coastal Act Sections 30603 and 30412, as detailed below.

Appeal Contentions 2.a and 3.b.4: Coastal Act standards must be applied in addition to LCP requirements due to the outdated nature of the LCP's existing Estero Area Plan and unresolved issues related to the Commission's Periodic Review of the San Luis Obispo County LCP.

Response: Only the certified LCP and the Coastal Act Access and Recreation policies of the Coastal Act can be applied as standards of review. Where the appeals reference Coastal Act standards that do not provide the standard of review, the Commission staff has identified the relevant LCP standards, and analyzed to project's consistency with these standards, in the findings below. Where applicable, the findings and recommendations of the Periodic Review have been incorporated into this analysis.

Appeal Contention 1.b, 3.b.15, 3.c.9, 3.c.10, 3.d.3: The project will result in harmful discharges to Morro Bay and the Los Osos groundwater basins due to incomplete removal harmful substances; the disposal system will adversely impact drinking water supplies; the project will not adequately remove TOC's, VOC's, carcinogens, human viruses and endocrine disruptors, and will therefore not achieve a safe or sustainable source of potable water; the use of treated effluent and harvest well water for irrigation poses human health risks; trucking of sludge exposes the public to spore borne disease.

Response: Concerns regarding the plant's ability to effectively remove harmful substances from wastewater, and dispose of the treated effluent and sludge in a manner that protects human health and safety, are issues addressed by RWQCB waste discharge requirements and Department of Health Services regulations, and are outside of the scope of the Commission's review. As detailed in their response to the appeals attached as Exhibit 6, the RWQCB has determined that construction and operation of the proposed facility is necessary to protect and restore the water quality of the Los Osos groundwater basin and the Morro Bay National Estuary. Special design and hazards considerations required by the LCP to protect coastal water quality and the natural and recreational resources of Morro Bay are addressed in subsequent findings of this report.



Appeal Contentions 2.a.4 and 3.b.1: It is premature to approve the project until California Cities Water Company and Southern California Water Company legal challenges to the disposal standards established by the Regional Water Quality Control Board (RWQCB) are resolved. Resolution of these lawsuits may require additional wastewater treatment such as reverse osmosis and/or advanced oxidation that would add to project costs, energy use, and environmental impacts that have not been addressed. For example, the use of reverse osmosis would result in a 30% waste stream of brine byproduct, and generate impacts that have not been addressed (e.g., impacts associated with brine drying beds or hauling untreated brine to Ventura County).

Response: Legal challenges to the RWQCB wastewater discharge requirements that focus on the adequacy of the requirements to protect water quality are outside of the siting, capacity, and appearance issues relevant to the Coastal Commission. If additional treatment becomes necessary, there is adequate space available on the site to accommodate additional features, as discussed below. Such future development would be subject to coastal development permit review.

According to the LOCSD, neither the RWQCB nor the Department of Health Services (DOHS) sees the need for additional treatment beyond the tertiary level of treatment that will be provided. If the DOHS regulations change in the future, or if the court orders the RWQCB to amend its Discharge Order to add additional treatment, LOCSD would perform additional evaluations to determine the most appropriate technology to satisfy those new requirements. At the current time, it appears that advanced oxidation (AO) may be a more cost effective and less difficult solution than reverse osmosis (RO) if the goal is to remove hormone disrupters and/or exotics. AO uses a hyper-chloride solution to strip exotics from the waste stream in the disinfection step instead of a membrane. Both AO and RO would result in a reject stream of brine on the order of 10% to 20% of the discharge. The LOCSD has had preliminary discussions with both Duke Energy and Avila Beach CSD in terms of discharging this brine through their respective outfalls. They have not reached closure yet on whether it would be feasible to build a pipeline to either location or whether we would truck the brine to either location. Both AO and RO would require additional facilities at the WWTF. For AO it may be possible to install these facilities into the disinfection process at the existing Treatment Building. If RO was chosen, it would be necessary to construct the "Tertiary" building at the WWTF shown on the plans as a future building next to the Treatment Building. The development of this building would require separate coastal development permit approval.

Appeal Contentions 1.b, 2.a.5, and 3.b.7: The project does not include an emergency response plan to address mechanical malfunctions, vandalism, or natural disaster, and does not ensure the health and safety of Los Osos residents and visitors. The project does not provide the 18 hours of emergency storage stated in the EIR, and does not adequately address impacts associated with potential sanitary sewer overflows, such as impacts to a nearby well. Use of treated effluent to irrigate landscaping at the treatment plant site also has the potential to impact this well.

Response: RWQCB Waste Discharge Requirements Order No. R3-2003-0007 and Mitigation Monitoring Resolution R3-2003-0006 establish safety standards and emergency and spill prevention and response plans. As noted above, special design and hazards considerations required by the LCP to



protect coastal water quality and the natural and recreational resources of Morro Bay are addressed in subsequent findings of this report.

Appeal Contentions 1.a.6, 3.b.14, 3.c.6: The cost of the project and its economic impact on residents and property owners has not been adequately addressed or equitably distributed. Variables in sludge treatment and disposal, as well as additional costs associated with cultural resource protection, further wastewater treatment, handling of water from harvest wells, and addressing the requirements of the National Environmental Protection Act (NEPA) have not been accounted for. The cost of the project conflicts with the Clean Water Act and environmental justice laws.

Response: The cost and economic impact of the project is outside of the scope of issues that are relevant to the Commission's review of this appeal. The RWQCB contends that any further delays to the construction of the facility will increase costs and jeopardize the availability of low-interest loans and low-income assistance programs.

Appeal Contentions 1.a.11, 3.b.9, 3.c.1, 3.b.4: Changes in the project require a supplemental EIR. These changes include the use of drywell vertical disposal; an increase in maximum harvest water withdrawals from 400,000 to 650,000 gallons per day; differences in the classification and handling of sewage sludge.

Response: The LOCSD is the lead agency for the environmental review required by the California Environmental Quality Act (CEQA), and has certified a final Environmental Impact report for the project. As a "responsible agency" San Luis Obispo County used the information contained in the EIR during its review and approval of the coastal development permit required for the project. Whether the LOCSD and County actions comply with CEQA is outside of the scope of issues relevant to the Commission's review of this appeal. To the degree that these contentions raise concerns that the environmental review has not provided adequate information to effectively address relevant LCP requirements, they are addressed in subsequent findings of this report.

Appeal Contentions 2.a.12, 2.d.4, 2.d.5, 2.d.6, 3.b.1, 3.b.11, and 3.d.4: The County approval does not adequately address environmental impacts associated with the handling of sewage sludge; the logistics and environmental impacts associated with the handling of septage from the decommissioned septic tanks; the use of treated water for irrigation; treatment and/or blending of upper aquifer water for use as drinking water; the potential need for individual homeowners to obtain NPDES permits for lateral connections; changes in classification and moisture content of sewage sludge; use of MBR and centrifuge technology; and changes in the lift system component of the collection system. County approval of the project at 30% design is premature.

Response: The above contentions are not based upon any specific LCP requirements or coastal resource issues, and appear to be oriented to the appellants' concerns regarding the adequacy of CEQA review and RWQCB and DOHS health and safety standards, addressed above. LCP issues associated with sludge hauling are addressed in the findings of this report regarding traffic and circulation. There are also specific findings regarding the project's compliance with LCP groundwater and coastal water quality protection requirements. To the degree that the contentions regarding particular treatment



technologies and NPDES requirements indirectly relate to these LCP issues such as visual impacts and coastal water quality, they are addressed in the subsequent findings of this report. As previously noted, concerns regarding impacts public health and drinking water supplies associated with particular treatment processes and disposal methods are not within the scope of issues relevant to the Commission's review.

With respect to the contention that the County's approval of 30% design is premature, there is no evidence that the engineering and design perfections that will be involved in completing these plans will raise new coastal resource issues. Since the County's approval, plans have been completed to 80%, and have been reviewed and approved by the County as being in substantial conformance to the plans approved in October 2003. Given the technical nature of the plans, and the tight time schedule order of the RWQCB, it is appropriate for the County to move forward with the review of the 30% plans, which accurately identify the overall scope of the development in terms of its size, location, and exterior design. In the unlikely instance that the final plans involve changes to the County approved plans with the potential for additional impacts to coastal resources, a new or amended coastal development permit from the County would be required.

As noted in the RWQCB's response to the appeals (attached as Exhibit 6), individual NPDES permits will not be required for individual connections to the wastewater treatment system.

Appeal Contention 2.d.6: The treatment system has not been designed to accept and treat septage from the North Coast Area of the County, inconsistent with the recommendations of the Board of Supervisors subcommittee.

Response: There is no LCP standard requiring the Los Osos Wastewater Treatment Facility to accept and treat septage from other areas of the County.

Appeal Contention 3.c.3: A STEP/STEG method of collection and treatment is environmentally superior.

Response: The method of collection and treatment is outside of the site, appearance, service area, and capacity issues relevant to the Commission's review. This method of collection was rejected by the LOCSD because of on-going maintenance costs, significant increases in septage hauling, concerns and impacts associated with maintaining watertight septic tanks, and considerably higher life cycle costs.

c. Conclusion:

Coastal Act Sections 30603 and 30412 prescribe the range of issues to be considered by the Commission in an appeal of a coastal development permit for a treatment works project. Appeal contentions that challenge the adequacy of CEQA and NEPA review, and that question whether RWQCB Waste Discharge Requirements and particular treatment and disposal techniques will effectively protect public health and the area's drinking water supply, are not within the range of issues relevant to the Commission's review, and do not raise a substantial issue regarding the project's consistency with the San Luis Obispo County certified LCP. To the degree that these contentions relate to relevant issues of



treatment works siting, appearance, capacity, and service area, they are addressed by the following findings of this staff report. In addition, there is no substantial issue raised by the concern that the County's approval of the project's 30% design was premature. No changes to the 30% design are expected that would raise new coastal resource issues. In the unlikely instance that such changes become necessary, they will require subsequent coastal development permit review and approval.

2. Siting Issues

a. Treatment Plant Siting Requirements

1) Appellant's Contentions

Appeal Contentions 2.a.1 and 3.b.3: The locally approved project is inconsistent with Section 23.08.288 of the San Luis Obispo County Coastal Zone Land Use Ordinance (CZLUO) setting forth standards for the development of a Public Utility Facility. Specifically, the proposed treatment plant location is inconsistent with the requirement to avoid sensitive areas given the availability of a feasible alternative that is not sensitive (i.e., the Andre property).

Appeal Contentions 2.b, 2.c., 2.d, 3.b.11 and 3.b.12: The project has changed since the Commission approved LCP Amendment 3-01 allowing the treatment plant and associated facilities to be located on the Tri-W site, in conflict with the premise that this location would minimize costs and serve community needs. Project changes have also increased visual impacts and landform alterations beyond that which were presented to the Commission during its review of LCPA 3-01.

2) LCP Standards

Section 23.08.288 of the Coastal Zone Land Use Ordinance states:

Public Utility Facilities: The requirements of this section apply to Public Utility Facilities where designated as S-13 uses by Coastal Table 'O', Part I of the Land Use Element. Public Utility Facilities for other than electric and communications transmission and natural gas regulation and distribution, require Development Plan approval pursuant to Section 23.02.034 (Development Plan).

- a. Permit requirements. In addition to the emergency repair and the general permit requirements of section 23.08.286a and b., Development Plan approval is required for any new facility or modification of any existing facility in the Agriculture, Rural Lands, Residential, Office and Professional, and Commercial land use categories. Development Plan approval is required for any new facility or modification to any existing facility which would increase the structure heights above those specified in section 23.04.124 or modify any operational standards causing an increase in any of the categories specified in chapter 23.06 of this title.*
- b. Application contents. In addition to the application materials required by Chapter 23.02 (Permit applications), permit applications shall also include descriptions of:*



- (1) The proposed design capacity of the facility; the operating schedule; and how the proposed facility interacts with incoming and outgoing utility services.*
 - (2) Plans for any overhead or underground transmission lines, transformers, inverters, switchyards or any required new or upgraded off-site transmission facilities.*
 - (3) Proposed erosion control measures, revegetation, screening and landscaping during construction and operation.*
 - (4) An oil and hazardous material spill contingency plan, including a demonstration that all materials can be contained on-site.*
 - (5) For electric and telephone centers, estimates of the non-ionizing radiation generated and/or received by the facility. These will include estimates of the maximum electric and magnetic field strengths at the edge of the facility site, the extent that measurable fields extend in all directions from the facility.*
 - (6) The number and identification by trades of estimated construction and operation forces. If construction is estimated to take over six months, the construction workforce shall be estimated for each six-month period. The estimates shall include numbers of locally hired employees and employees who will move into the area, and a discussion of the estimated impact that employees moving into the area will have on housing, schools and traffic.*
- c. Development standards. The following standards apply in addition to any that may be established as conditions of approval:*
- (1) Environmental quality assurance. An environmental quality assurance program covering all aspects of construction and operation shall be submitted prior to construction of any project component. This program will include a schedule and plan for monitoring and demonstrating compliance with all conditions required by the Development Plan. Specific requirements of this environmental quality assurance program will be determined during the environmental review process and Development Plan review and approval process.*
 - (2) Clearing and revegetation. The land area exposed and the vegetation removed during construction shall be the minimum necessary to install and operate the facility. Topsoil will be stripped and stored separately. Disturbed areas no longer required for operation will be regraded, covered with topsoil and replanted during the next appropriate season.*
 - (3) Fencing and screening. Public Utility Facilities shall be screened on all sides. An effective visual barrier will be established through the use of a solid wall, fencing and/or landscaping. The adequacy of the proposed screening will be determined during the land use permitting process.*



- d. *Limitation on use, sensitive environmental areas. Uses shall not be allowed in sensitive areas such as on prime agricultural soils, Sensitive Resource Areas, Environmentally Sensitive Habitats, or Hazard Areas, unless a finding is made by the applicable approval body that there is no other feasible location on or off-site the property. Applications for Public Utility Facilities in the above sensitive areas shall include a feasibility study, prepared by a qualified professional approved by the Environmental Coordinator. The feasibility study shall include a constraints analysis, and analyze alternative locations.*

3) Discussion

The San Luis Obispo County certified LCP uses Sensitive Resource Area (SRA) Combining Designations to designate areas that contain important costal resources, such as environmentally sensitive habitats. Although the proposed treatment site is not mapped by the LCP as an SRA, it does contain environmentally sensitive coastal scrub habitat, and therefore constitutes an SRA.

CZLUO Section 23.08.288d allows public facilities within SRA's only where there is no other feasible location. To address this requirement, applications to develop public utility facilities in sensitive areas must include a feasibility study analyzing constraints and alternative locations. Appellants assert that the project is inconsistent with these requirements because there is a feasible alternative for the treatment plant outside of a Sensitive Resource Area (SRA) – the Andre site.

As required by Section 23.08.288, the feasibility and constraints of alternative treatment plant locations have been thoroughly considered. The LOCSD has rejected the Andre site as a feasible alternative because it does not meet project objectives of providing open space amenities centrally located in the community, and because of higher operating and construction costs. The Commission evaluated this issue as part of LCP Amendment 3-01, and adopted the following finding:

As stated in the County's response [to CCC staff comments on the Draft EIR], there has been an exhaustive assessment of alternative sites for the treatment plant site. Although the Andre site may avoid direct impacts to ESHA as a result of treatment plant construction, it would result in the conversion of productive (although not prime) agricultural land, would add significant costs to the project, and would not achieve the project's objectives. Impacts to ESHA would not be completely avoided by locating the treatment plant at this site, as the collection and distribution system running to and from this location would require crossing of Los Osos Creek. Thus, it is not clear that the Andre site provides either a feasible, or environmentally preferable alternative to the Tri-W site. Given this uncertainty, and the critical resource protection needs that will be addressed by the implementation of a wastewater treatment project (see findings regarding Water Quality and Marine Resources), it is more protective of coastal resources to allow construction of the treatment plant at the proposed location than to cause the delays that would be associated with further consideration of an alternative sites.

In response to these findings, the appeals assert that the circumstances under which the Tri-W site was authorized for wastewater treatment facilities are no longer applicable. Specifically, the CCLO appeal points to a reduction in public amenities as conflicting with the premise that a downtown location is



required to serve community needs.

An evaluation of this contention does not reveal any significant changes to the project since Commission approval of LCP Amendment 3-01 in August 2002. Exhibit 5, comparing the August 2002 preliminary site plan to the 2003 County approved site plan, illustrates that the proposed project continues to provide much needed public park and open space area. As noted by the appellants, the current site plan no longer includes the following amenities: demonstration gardens, a water garden, community gardens, a picnic area, tot lot, amphitheater, and CSD offices and parking. These cost saving and design measures do not, however, reduce the amount of public recreation and open space area to be provided. Over 8 acres of the site continues to be designated as public use and open space areas, as summarized in the following table:

Site Feature	August 2002 Site Plan	Current Site Plan
Dog Park	0.74 acres	0.6 acres
Multi-Use Area	3.09 acres	3.26 acres
Trails and Paths	0.96 acres	0.96 acres
Landscaped Area	3.77 acres	3.29 acres
TOTAL	8.56 acres	8.11 acres

In addition to providing recreational opportunities, the open space area maintains future opportunities to accommodate the amenities considered as part of the preliminary site plan. For instance, the current site plan designates a potential location the future construction of a CSD office building.

The LOCSD plan comparison similarly shows that appellant allegations regarding the changes in visual impact do not raise a significant issue. As shown by Exhibit 5, there have been only minor modifications to the proposed structure; the treatment plant building has been reduced in height by six feet, the height of the headworks building has increased by 4 feet, and there has been a reduction in building site coverage of approximately 4,060 square feet. Project conformance to LCP visual protection standards are addressed in further detail in subsequent findings of this report.

Finally, appellants challenge the previous rejection of the Andre site because of increased costs (see contention 1.b.1). In response, the RWQCB asserts that any further delays to the project, would jeopardize several million dollars in state and federal grant funds, as well as low-income funding assistance. Further delay would also interfere with the RWQCB's objective of providing a timely solution to a serious water quality problem. Appellants counter that no significant delays would result in light of other outstanding regulatory requirements (e.g., Endangered Species Act consultations). It is not reasonable to assume, however, that adding to the list of outstanding issues will not cause additional



delay. Rather, it is clear that a change in location would trigger additional studies, negotiations, and regulatory reviews that would interfere with the RWQCB Time Order for completion of the project.

4) Conclusion

Contentions that the treatment plant is inconsistent with CZLUO Sections 23.08.288 do not raise a substantial issue because LCP Amendment 3-01 specifically authorized construction of a treatment plant on the Tri-W site after careful consideration of alternatives. There are no changed circumstances or new information since the Commissions approval of this amendment that provides an appropriate basis for pursuing an alternative treatment site.

b. Environmentally Sensitive Habitat Areas

1) Appellant's Contentions

Appeal Contention 1.a.7: The location of the treatment plant is inconsistent with standards that limit development in environmentally sensitive habitat areas (ESHA) to resource dependent uses, and that prohibit a significant disruption of ESHA. It is improper to allow the treatment plant in ESHA in order to balance a conflict with the need to protect marine resources and coastal water quality because there is an alternative site available that does not contain ESHA. In addition, the decommissioning of septic tanks may adversely impacts wetlands and riparian corridors through changes in hydrology.

Appeal Contentions 1.a.14 and 3.b.2 and 3.b.5: The mitigation proposed for the loss of habitat attributable to the construction of the treatment facilities is not adequate. A 4:1 mitigation ratio will not be achieved, and the use of the mitigation site for effluent disposal will degrade this habitat area. The extent of habitat impacts from ancillary facilities have not been quantified or adequately mitigated. The mitigation site does not provide like for like habitat. The Community Habitat Conservation Plan has not been completed.

Appeal Contention 3.a.2: The project is inconsistent with CZLUO Section 23.07.160 regarding Sensitive Resource Areas, because the treatment plant site has not been mapped as a sensitive resource area as requested by the Coastal Commission, because the development of the treatment plant and disposal field will result in the removal of 100 trees that provide raptor, bird, and monarch butterfly habitat, and because these impacts could be avoided by locating the treatment plant on the Andre site.



2) LCP ESHA Policies

LCP Section 23.07.160 states:

23.07.160 Sensitive Resource Area (SRA):

The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act. The requirements of this title for Sensitive Resource Areas are organized into the following sections:

- 23.07.162 Applicability of Standards*
- 23.07.164 SRA Permit and Processing Requirements*
- 23.07.166 Minimum Site Design and Development Standards*
- 23.07.170 Environmentally Sensitive Habitats*
- 23.07.172 Wetlands*
- 23.07.174 Streams and Riparian Vegetation*
- 23.07.176 Terrestrial Habitat Protection*
- 23.07.178 Marine Habitats*
- 23.07.162 Applicability of Standards:*

The standards of Sections 23.07.160 through 23.07.166 apply to all uses requiring a land use permit that are located within a Sensitive Resource Area combining designation.

LCP Amendment 3-01 established the following Estero Planning Area standard for protecting coastal resources, including ESHA, during the construction and operation of a wastewater treatment plant on the Tri-W site:

Environmental Mitigation. The land use/coastal development permit for development of a wastewater treatment plant and related facilities shall require implementation of the following mitigation measures as described on the listed pages in the Final Environmental Impact Report for the Los Osos Community Services District Wastewater Facilities Project (FEIR), SCH# 99111-3, certified on March 1, 2001. Some of the following mitigation measures apply to other components of a proposed wastewater facilities project, as the entire project is expected to be processed under a single land use/coastal development permit.

- a. Geology. Mitigation measures GEO-1 through GEO-9 on pages 112-113, Part II.*
- b. Hydrogeology. Mitigation measures H-1 through H-3 on pages 114, Part II.*
- c. Drainage. Mitigation measures WR-1 through WR-3 on pages 115, Part II.*



- d. *Cultural Resources. Mitigation measures C-1 and C-2 on page 116, Part II.*
- e. *Traffic. Mitigation measures TR-1 and TR-2 on page 117, Part II.*
- f. *Air Quality. Mitigation measures AQ-1 through AQ-4 on pages 118-119, Part II.*
- g. *Noise. Mitigation measures N-1, N-2, N-4, and N-5 on page 120, Part II.*
- h. *Public Health, Safety and Services. Mitigation measures P-1 through PS-5 on pages 120- 121, Part II*
- i. *Visual Resources. Mitigation measures AES-1 through AES-5 on pages 121, Part II.*
- j. *Biological Resources. Mitigation measures BIO-1 through BIO-16 on pages 121-128, Part II.*

The specific requirements for the Los Osos Wastewater Treatment facility cited by the above LCP standard are attached to this report as Exhibit 4.

3) Discussion

As discussed in the preceding finding, LCP Amendment 3-01 acknowledged and addressed that the development of the wastewater treatment facilities on the 11 acre Tri-W site would remove approximately 7.5 acres of sensitive but degraded coastal scrub habitat. After considering alternatives including the Andre site, the Commission identified that the proposal to allow a wastewater treatment facility on the Tri-W site raised a conflict between the ESHA protection requirements of Coastal Act section 30240, and requirements to protect marine resources and coastal water quality established by Coastal Act Sections 30230 and 30231. The Commission concluded that, in light of the essential need for a wastewater treatment plant to protect the water quality of Morro Bay, the construction of a wastewater treatment facility on the Tri-W site, combined with off-site habitat mitigation, was, on balance, more protective of significant coastal resources than requiring protection of the habitat contained on the Tri-W site.

LCP Amendment 3-01 inserted a specific standard for wastewater facility development in Los Osos that supersedes the more general SRA and ESHA policies of the LCP. In accordance with the LCP's Framework for Planning, Area Plan Standards control in situations where LCP provisions conflict. The mitigation standards established by the LCP amendment are more specific to the proposed project than the LCP SRA and ESHA standards cited by the appellants, and provide the standard of review for addressing SRA/ESHA impacts associated with the treatment plant.

With respect to mitigating the direct impacts of project construction, the appeals do not challenge the project's consistency with the measures established by the project EIR and LCP Amendment 3-01, but rather question the adequacy of the mitigation standards established by these documents. That approach involves mitigating the direct impacts of facility construction by acquiring, restoring, and protecting the 80-acre Broderson site. The appellants assert that this mitigation program will not effectively offset the



impacts of treatment plant construction with like-for-like habitat, at adequate ratios. Appellants also contend that the maintenance of the disposal field on the Broderson site will interfere with habitat protection and enhancement objectives.

These concerns were thoroughly evaluated by the project EIR and the Commission's analysis of LCP Amendment 3-01. With respect to mitigation ratios, the Findings for Commission approval of LCP Amendment 3-01 state:

... the LOCSD has entered into an agreement to purchase the 80-acre Broderson site, which will serve dual purposes. As mentioned above, the site will be used for leach fields for the disposal of treated wastewater in a manner that will recharge the groundwater basin. This will disturb a total of about 8 acres. The site will then be restored and preserved as coastal scrub and maritime chaparral as a means to offset the direct biological impacts caused by the construction of the wastewater treatment system. The long-term preservation and enhancement of the 80 acres of habitat contained on the Broderson site provides an effective way to offset the unavoidable biological impacts that will result from the construction of this essential public facility, and will help ensure the biological continuance of the affected types of habitats, for the following reasons.

- The loss of 7.5 acres of degraded coastal scrub habitat contained on the Tri-W site, which occurs in very low densities, and the temporary impacts to about 8 acres of medium quality scrub habitat on the Broderson site, will be offset by the preservation and enhancement of over 20 acres of high quality coastal scrub habitat on the Broderson site, which has a very high density of observed snails and is in the Critical habitat for the snail designated by the USFWS.*
- The loss of 2.5 acres of Eucalyptus groves on the Tri-W site, and 0.21 acre on the Broderson site, will be offset by the preservation of a roughly equivalent amount on the Broderson site, provided that the non-native eucalyptus may be removed in the future should the responsible agencies determine that it is most protective of coastal habitats.*
- The remaining 55 acres of the Broderson site contains sensitive high-quality Maritime Chaparral and Coast live oak woodland. This area is important habitat for rare plants including the endangered Morro manzanita and Indian knob mountainbalm.*
- The 80-acre Broderson parcel is a key component of the "greenbelt" surrounding the urban area of Los Osos. The establishment, protection, and long-term maintenance of the sensitive habitat areas that comprise the greenbelt is intended to maximize protection and enhancement of the multiple species and habitats that are unique to the area, as further discussed below.*

As is the case in other urbanized areas of California that once supported coastal scrub and maritime habitats, the vacant lands of Los Osos continue to support these disappearing natural resources. In the past, most efforts to protect these remaining habitats have been pursued on a



case-by-case basis. This has resulted in a patchwork of protected habitat, the long-term viability of which diminishes as these habitat areas become further fragmented and degraded by adjacent urban development. In recognition of this trend, resource agencies are working towards regional approaches for habitat conservation that can accommodate reasonable use of private property and at the same time achieve maximum protection of sensitive habitats. The standards established by the amendment for mitigating the biological impacts of the treatment plant development are consistent with the regional habitat protection planning effort currently underway in Los Osos.

In accordance with the above finding, the off-site mitigation program identified by the EIR was incorporated into the LCP as an effective way to address the direct impacts to ESHA associated with project construction. The County approved project is consistent with this approach.

In response to concerns that leachfield maintenance will interfere with habitat protection and enhancement at the Broderson site, it should be noted that the 8 -acre disposal field was not included as mitigation for biological impacts by the EIR. Nevertheless, to maximize the compatibility of the leachfield area with surrounding habitat protection and enhancement efforts, the leachfield area will be planted with native plants with a shallow root system that will extend the life of the leach fields. It is anticipated that leach line renovation will be needed at some point in the future, which means that a portion of the plants introduced after construction will someday be removed for that purpose. To minimize disruption to the surrounding habitat the County conditions of approval require rehabilitation of the percolation fields on a rotational basis, so no more than one field will under re-construction at any one time. In addition, access routes to the leachfields must be sized and located to have the minimum impact on the habitat. When combined with requirements for prompt revegetation of disturbed areas, leachfield maintenance will not interfere with habitat restoration and protection objectives. (See Mitigation Measures GEO-8 and GEO-9 in Exhibit 4, and County conditions of approval 26, 27, and 65-74 in Exhibit 1.)

Regarding wetlands and riparian habitats, the EIR evaluated potential impacts associated with changes in groundwater levels due to the decommissioning of septic systems. The EIR concluded that although localized alterations of habitats may occur, no net loss of wetland habitat is anticipated. The project includes monitoring of groundwater levels throughout the community, including the levels near wetlands, by logging water supply wells, groundwater harvest wells, and a series of 30 monitoring wells throughout the collection/disposal area that are part of the effluent disposal system. The monitoring system will provide sufficient coverage to evaluate groundwater levels, not only to help ensure wetland protection, but to guard against surfacing groundwater from disposal operations. Moreover, the wastewater treatment project will help protect and restore the water quality on which the biological productivity of wetland and riparian habitats depend, and thereby have an overall beneficial impact on these habitats. Finally, localized areas that have become unnaturally wet due to surfacing septic system discharges are not necessarily biologically productive wetlands that should be protected. The contention that the decommissioning of septic tanks may adversely impact wetland resources therefore does not raise a substantial issue regarding LCP compliance.



Finally, appellants content that the County approval is inconsistent with requirements for the development and implementation of a Los Osos Habitat Conservation Plan. EIR Mitigation Measure BIO-16, incorporated into the LCP as a standard for the development of the Los Osos Wastewater Treatment Project states:

The LOCSD, in conjunction with the California Department of Fish and Game (CDFG), the US Fish and Wildlife Service (USFWS), San Luis Obispo County and the California Coastal Commission shall prepare and implement a Habitat Conservation Plan (HCP) or Natural Community Conservation Plan (NCCP) for the long-term preservation of habitat remaining within the Los Osos Greenbelt, including habitat remaining on individual vacant lots. The HCP/NCCP shall identify the habitat resources and the quality of those resources on the remaining vacant properties within the Greenbelt. The range of potential conservation programs to be considered in the HCP/NCCP shall include, but not be limited to the following:

- *The identification of policies and programs to be incorporated into the Estero Area Plan aimed at the long-term preservation of sensitive biological resources in the Los Osos area; such policies and programs may include:*
 - *Transfer of development credits*
 - *Clustering*
 - *Avoidance of sensitive resources in site design*
 - *Changes in density and land use*
 - *Incorporation of open space into the design of new development*
- *Programs aimed at facilitating coordination among agencies and organizations involved in management and conservation/preservation of sensitive resources, including USF&WS, CDFG, California Coastal Commission, San Luis Obispo County, the LOCSD, MEGA, NEP, Land Conservancy of San Luis Obispo County, and others;*
- *The creation of a landbank program to facilitate the purchase of properties with high quality habitat within the Greenbelt, to be repaid over time from fees on new building permits;*
- *Programs for the acquisition of properties within the Greenbelt with significant habitat resources.*

With respect to the timing of this mitigation, the EIR states that the HCP should be prepared prior to the Coastal Development Permit application, and implemented following approval by USFWS and CDFG.

As noted by the appellants, the County's approval of the project is not in strict compliance with this provision because a complete draft of the HCP has not been completed. Nevertheless, the LOCSD has diligently pursued completion of the HCP in close coordination with the involved agencies, and released an Administrative Draft in February 2004. San Luis Obispo County is concurrently processing the Estero Area Plan update, which incorporates many of the regional habitat planning and conservation



strategies of the HCP.

As described by the EIR and LCP Amendment 3-01, a primary objective of these efforts is to address the biological impacts of the buildout that will be supported by the establishment of a wastewater treatment system. To ensure that regional habitat conservation and planning needs are resolved before buildout occurs, Condition 73 of the County's permit requires the HCP to be completed before sewer hookups for new construction can be approved. In addition, County Condition 74 requires that an Implementing Agreement for the Habitat Conservation Plan be approved by the appropriate agencies, and an Endangered Species Act Section 10 permit issued, before sewer hookups for new construction can be approved.

These conditions will address secondary impact of wastewater construction on biological resources, without delaying the effort to address water quality problems being caused by existing septic systems. Under this approach, construction of the treatment plant can proceed, and existing development served, during the time that regional habitat planning issues are resolved. At the same time, because the LCP requires applications for new development to demonstrate the availability of public services, completion of the regional habitat plan will be a prerequisite to the processing of coastal development permits for any new development within the sewer service area. As a result no substantial issue is raised by the contention that the HCP is not complete.

4) Conclusion

The Coastal Development Permit approved by San Luis Obispo County effectively carries out the ESHA standards and mitigation requirements applicable to the development of the Los Osos Wastewater Treatment Project, established by LCP Amendment 3-01. Appellants' concerns regarding the adequacy of the mitigation measures therefore do not raise a substantial issue regarding the approved project's consistency with the applicable ESHA provisions of the certified LCP.

c. Water Quality and Marine Habitats

1) Appellant's Contentions

Appeal Contention 1.b: Flooding of the treatment plant site and power outages will result in harmful discharges to Morro Bay.

Appeal Contention 2.a.3: The County approval is inconsistent with Section 23.05.024 regarding Grading Plans.

Appeal Contention 2.a.13 and 3.b.8: The construction of the wastewater treatment infrastructure, the operation of the treatment plant, and the buildout of the community, will result in polluted runoff.

Appeal Contention 3.a.4: The project is inconsistent with Sections 23.05.040, .044, and .046 because it is unlikely that a drainage plan was approved prior to approval of the land use permit, and because there is inadequate treatment at the treatment plant site.



2) LCP Policies

ESHA Policy 5 states:

Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved, and where feasible, restored. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

ESHA Policy 14 states:

Development adjacent to coastal wetlands shall be sited and designed to prevent significant impacts to wetlands through noise, sediment or other disturbances. Development shall be located as far away from the wetland as feasible, consistent with other habitat values of the site. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Coastal Watersheds Policy 7, entitled “Siting of New Development”, states in relevant part:

Grading for the purpose of creating a site for a structure or other development shall be limited to slopes of less than 20 percent ...

In all cases, siting of development and grading shall not occur within 100 feet of any environmentally sensitive habitat ...[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO COASTAL ZONE LAND USE ORDINANCE SECTIONS: 23.05.034 (GRADING) AND 23.04.021 (LAND DIVISIONS).]

Policy 8 for Coastal Watersheds states:

Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 9 for Coastal Watersheds states:

Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based in evaluation of the development’s design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site-specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION



23.05.036 OF THE CZLUO.]

Policy 10 for Coastal Watersheds states:

Site design shall ensure THAT drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLCIY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]

Section 23.05.024 of the CZLUO states:

23.05.024 Grading Plan:

- a. When required: In any case where a proposed project requiring land use permit approval involves 50 or more cubic yards of earth moving, the land use permit application shall include a grading plan containing the information specified by subsection b of this section.*
- b. Grading plan content: A grading plan shall be neatly and accurately drawn to scale, including the following information:*
 - (i) Existing ground contours or elevations of the site at five foot intervals.*
 - (ii) Contours or site elevations after grading is completed, including any modifications to drainage channels.*
 - (iii) Any required retaining walls or other means of retaining cuts or fills.*
 - (iv) Elevations of the edge of the pavement or road at driveway entrance.*
 - (v) Elevation of the finish floor of the garage or other parking area.*
 - (vi) Elevations at the base of building corners.*
 - (vii) An estimate of the volume of earth to be moved, expressed in cubic yards.*

Where a grading permit is required by Section 23.05.025 (Grading Permit Required), the grading plan shall also include all information required by Section 23.05.028 (Grading Permit Application Content).



Section 23.05.040 of the CZLUO states:

23.05.040 Drainage:

Standards for the control of drainage and drainage facilities provide for designing projects to minimize harmful effects of storm water runoff and resulting inundation and erosion on proposed projects, and to protect neighboring and downstream properties from drainage problems resulting from new development. The standards of Sections 23.05.042 through 23.05.050 are applicable to projects and activities required to have land use permit approval.

Section 23.05.044 of the CZLUO states:

23.05.044 Drainage Plan Preparation and Content:

Drainage plans shall be neatly and accurately drawn, at an appropriate scale that will enable ready identification and recognition of submitted information. The County Engineer may require drainage plans to be prepared by a registered civil engineer.

- a. Basic drainage plan contents: Except where an engineered drainage plan is required, a drainage plan is to include the following information about the site:*
 - (1) Flow lines of surface waters onto and off the site.*
 - (2) Existing and finished contours at two-foot intervals or other topographic information approved by the County Engineer.*
 - (3) Building pad, finished floor and street elevations, existing and proposed.*
 - (4) Existing and proposed drainage channels including drainage swales, ditches and berms.*
 - (5) Location and design of any proposed facilities for storage or for conveyance of runoff into indicated drainage channels, including sumps, basins, channels, culverts, ponds, storm drains, and drop inlets.*
 - (6) Estimates of existing and increased runoff resulting from the proposed improvements.*
 - (7) Proposed erosion and sedimentation control measures.*
 - (8) Proposed flood-proofing measures where determined to be necessary by the County Engineer.*
- b. Engineered plan content: Engineered drainage plans are to include an evaluation of the effects of projected runoff on adjacent properties and existing drainage facilities and systems in addition to the information required by subsection a of this section.*



Section 23.04.046 of the CZLUO states:

23.05.046 Drainage Plan Review and Approval:

All drainage plans are to be submitted to the County Engineer for review, and are subject to the approval of the County Engineer, prior to issuance of a land use or construction permit, as applicable. Actions of the County Engineer on drainage plans may be appealed to the Board of Supervisors in accordance with the procedure set forth in Section 21.01.042a of this title; except that where the site is within a Flood Hazard combining designation, the procedure described in Section 23.07.066d shall be used.

LCP Water Quality Standards specific to the development of the Los Osos Wastewater Treatment Project established by LCP Amendment 3-01 are included in Exhibit 4.

3) Discussion

Appellants contend that the site of the treatment plant poses significant risks to the water quality of Morro Bay due to its proximity to the bay, and its location in an area that receives large amounts of stormwater runoff. Appellants are particularly concerned that flood events and power outages could result in sewage spills that would flow directly into Morro Bay. In addition to this general concern, appellants assert that the project is inconsistent with specific CZLUO grading and drainage plan requirements.

As observed by the appellants, the treatment plant site is in a low-lying area that receives large amounts of storm water runoff. Much of the South Bay Urban Area lacks stormwater infrastructure, and the impacts of uncontrolled runoff from the surrounding hillside are clearly evident at the treatment plant site in the form of eroded gullies and localized ponding during storm events.

The hydrologic features of the site, and its relationship to areawide drainage patterns, have been thoroughly considered in the design of the project. Use of the Tri-W site for wastewater treatment has been viewed by the LOCSD as an opportunity to address these localized drainage problems. The preliminary drainage plan provides a stormwater percolation basin designed to accommodate runoff from surrounding area during a 100-year storm event. On-site drainage will be conveyed to a retention basin located in the northwest corner of the treatment plant site that has been designed to accommodate a 50-year storm.

To protect water quality during and after construction, the LOCSD is responsible for: obtaining a National Pollutant Discharge Elimination System (NPDES) permit from the RWQCB that must also be approved by the County Engineering Department; preparing a final grading, drainage, and erosion control plan for the Tri-W site that incorporates the recommendations of a geotechnical engineering evaluation; and, developing a long-term erosion control plan that identifies the erosion control practices to be implemented throughout the construction and operation of the wastewater treatment facilities. Please refer to County Conditions 23-28 for the specific details of grading and drainage plan requirements. These conditions effectively carry out the water quality protection requirements



established for the sewer by the project EIR and incorporated into the LCP via LCP Amendment 3-01.

To address potential sewage spills, system malfunctions, and/or natural disasters, the treatment plant has been designed with 100 percent redundancy; every component has at least one identical back-up that would be brought on-line in the event of failure or malfunction. Operation of the plant will be monitored 24 hours a day. The treatment plant will be equipped with its own backup diesel power generator in case of power failure, and will accommodate between 8-12 hours of overflow capacity in the unlikely event that the treatment plant cannot operate. In accordance with RWQCB and DOHS requirements, the LOCSD will prepare an Emergency Response Plan that will prescribe procedures for responding to sewer or chemical spills. Standards for seismic and geologic safety are established by County conditions 29-32. A Hazardous Materials Management Plan is required by County condition 51. Again, these conditions carry out the EIR requirements that incorporated into the Estero Area Plan as standards for sewer development by LCP Amendment 3-01.

In light of these provisions, the appellants contention do not raise a substantial issue regarding project compliance with the LCP requirements cited above, for the following reasons:

ESHA Policy 5 and Coastal Watershed Policies 8, 9 and 10: The conditions of County approval establish standards for drainage, erosion control, and emergency events that protect the habitats and water quality of the Morro Bay National Estuary. Correcting water quality problems associated with existing septic discharges and uncontrolled drainage on the Tri-W site will have a beneficial impact on the estuary.

ESHA Policy 14: Project siting and design avoids direct impacts to wetlands and includes adequate setbacks, erosion, and drainage controls to prevent significant adverse impacts.

Policy 7 for Coastal Watersheds: Construction of the wastewater treatment system generally does not involve development on steep slopes, to the degree that the collection and disposal system may necessitate the installation of piping in hillside areas, the terms of the County approval provides appropriate control to prevent such construction from resulting in erosion or sedimentation. As detailed in prior findings of this report, unavoidable impacts to ESHA have been addressed and mitigated in accordance with the terms of LCP Amendment 3-01.

CZLUO Sections 23.05.024 and 23.05.040 –046: The required grading and drainage plans were submitted with the LOCSD application. In accordance with these ordinances, the County's conditions of approval require final grading and drainage plans to be approved by the County Engineering Department prior to the commencement of construction.

4) Conclusion

Water Quality and Marine Habitat issues associated with the proposed location of wastewater treatment facilities have been adequately addressed by the project design and the terms of the County's approval. The contentions of the appeal do not raise a substantial issue regarding the project's conformance to LCP standards for the protection of coastal water quality and the sensitive habitats of the Morro Bay National Estuary.



d. Archaeological Resources

1) Appellant's Contentions

Appeal Contentions 2.a.9 and 3.a.1, and 3.b.12: The project is inconsistent with requirements to protect archaeological, paleontological, and historic resources, such as CZLUO Section 23.07.104b requiring preliminary site surveys. Potential impacts to archaeological resources have been underestimated, and provisions for monitoring such impacts are inadequate. The costs, logistics, responsibility, and interagency coordination associated with archaeological monitoring have not been effectively addressed.

2) LCP Policies

Policy 1 for Archaeological Resources states:

The County shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 4 for Archaeological Resources states:

Development shall require a preliminary site survey by a qualified archaeologist knowledgeable on Chumash culture prior to a determination of the potential environmental impacts of the project. [THIS SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106² OF THE CZLUO.]

Policy 5 for Archaeological Resources states in part:

Where substantial resources are found as a result of a preliminary survey before construction, the county shall require a mitigation plan to protect the site. ... [THIS SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106 OF THE CZLUO.]

CZLUO Section 23.07.104 states:

23.07.104 Archaeologically Sensitive Areas:

To protect and preserve archaeological resources, the following procedures and requirements apply to development within areas of the coastal zone identified as archaeologically sensitive.

a. Archaeologically sensitive areas. The following areas are defined as archaeologically sensitive:

² References to CZLUO Section 23.07.106 are a typographical error in the Coastal Plan Policies document. The applicable ordinance is 23.07.104.



- (1) Any parcel within a rural area which is identified on the rural parcel number list prepared by the California Archaeological Site Survey Office on file with the county Planning Department.*
 - (2) Any parcel within an urban or village area which is located within an archaeologically sensitive area as delineated by the official maps (Part III) of the Land Use Element.*
 - (3) Any other parcel containing a known archaeological site recorded by the California Archaeological Site Survey Office.*
- b. Preliminary site survey required. Before issuance of a land use or construction permit for development within an archaeologically sensitive area, a preliminary site survey shall be required. The survey shall be conducted by an archaeologist knowledgeable in Chumash Indian culture and approved by the Environmental Coordinator. The purpose of the preliminary site survey is to examine existing records and to conduct a preliminary surface check of the site to determine the likelihood of the existence of resources. The report of the archaeologist shall be submitted to the Planning Department and considered in the evaluation of the development request by the applicable approval body.*
 - c. When a mitigation plan is required. If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by the archeologist. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the applicable approval body.*
 - d. Required finding. A land use or construction permit may be approved for a project within an archaeologically sensitive area only where the applicable approval body first finds that the project design and development incorporates adequate measures to ensure protection of significant archeological resources.*
 - e. Archeological resources discovery. In the event archeological resources are unearthed or discovered during any construction activities, the standards of Section 23.05.140 of this title shall apply.*

Additional archaeological protection and mitigation standards established for the sewer project by the EIR and incorporated into the Estero Area Plan via LCP Amendment 3-01 are attached to this report as Exhibit 4.



3) Discussion

Impacts to coastal resources from the construction of the collection system, treatment system, and disposal system were evaluated by the project EIR by investigating records for the project area, interviewing archaeological experts, and conducting site surveys at the Tri-W and Broderson sites. In reviewing the project's consistency with LCP archaeological studies, County staff also reviewed and applied earlier archaeological studies for the project area. According to these reviews, no resources were found at either the Tri-W or Broderson sites, and the largest area of expected impact will involve the collection system. Since collection pipes will occur below existing roadways, the County determined that site surface survey were not practical.

In accordance with LCP requirements LCP, the LOCSD has developed a resource mitigation plan that has been submitted to the State Historic Preservation Office, and specified procedures for further study, subsurface testing, monitoring during construction activities, and compilation of an archaeological resource database. In the event archaeological resources are unearthed or discovered during construction, Section 23.05.140 of the CZLUO requires the following:

- a. Construction activities shall cease, and the Environmental Coordinator and Planning Department shall be notified so that the extent and location of discovered materials may be recorded by a qualified archeologist, and disposition of artifacts may be accomplished in accordance with state and federal law.*
- b. In the event archeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the County Coroner is to be notified in addition to the Planning Department and Environmental Coordinator so that proper disposition may be accomplished.*

These provisions are implemented by conditions 34 – 37 of the County's conditions of approval.

Notwithstanding these measures, appellants remain concerned that among other things, individual connections to the sewer that are the responsibility of property owners have not been adequately addressed. To address this issue, the Cultural Resources Treatment Plan for the project calls for a comprehensive investigation of all trenching work during the project's construction. This will include cataloging of archaeological resources in the location where future lateral connections to the collection system will take place. The location of lateral collections will be adjusted where possible to avoid archaeological resources, and the Plan will identify where monitoring of lateral connections will be required due to their proximity to archaeological resources.

Given these measures, there is no substantial issue regarding the project's conformance to the applicable LCP requirements cited above, as summarized below:

Policy 1 for Archaeological Resources: The extent of excavation required to install a wastewater collection system makes the avoidance of impacts to archaeological resources infeasible. The LOCSD and the County have developed an adequate mitigation plan, in coordination with the Sate Historic



Preservation Office, to address unavoidable impacts.

Policy 4 for Archaeological Resources: Site surveys have been conducted at both the treatment plant site and the primary disposal site by qualified archaeologists, and no cultural resources were found. Although site surveys were not conducted for the collection system due to its location beneath roadways, potential impacts to cultural resources have been anticipated and appropriately addressed.

Policy 5 for Archaeological Resources: The County has required a cultural mitigation program in accordance with this policy.

CZLUO Section 23.07.104: Ordinance requirements for mitigating impacts to archaeological resources are implemented by project conditions of approval, as discussed above.

4) Conclusion

Cultural resource issues associated with the construction of the wastewater project have been addressed by the project design and the terms of the County's approval. The contentions of the appeal do not raise a substantial issue regarding the project's conformance to LCP standards for the protection of archaeological and paleontological resources.

e. Land Use Compatibility

1) Appellant's Contentions

Appeal Contentions 1.c, 2.a.8, 3.a.6, 3.a.8, and 3.d.2: The treatment facility is not compatible with surrounding land uses and community facilities (e.g., library, park, community center, church, school) and is therefore inconsistent with CZLUO Section 23.02.010c and d. The location of the treatment plant does not comply with Section 23.08.074(3) of the CZLUO, which states that schools should not be located any closer than one thousand feet to an industrial or commercial service category, or with LCP standards for the protection of historic resources, due to its proximity to the Historic Los Osos Schoolhouse. Locating the treatment facility in the center of town also poses health and safety risks, as well as odor problems, inconsistent with Section 23.06.084 of the CZLUO. Proposed odor controls have not been tested. The park facilities identified on the plans for the treatment plant will have little benefit to the community due to the lack of a public restroom and inadequate parking. Locating a park adjacent to a treatment facility also exposes the public to hazards. There is a feasible, less-environmentally damaging alternative for the treatment plant that would be more compatible with surrounding land uses than the proposed site.

Appeal Contention 3.a.3: The project is inconsistent with CZLUO Section 23.05.039 regarding Nuisance and Hazard Abatement, because the impacts of noise and dust on the town could be avoided by locating the treatment plant on the Andre site.



2) LCP Policies

CZLUO Section 23.02.010 states:

23.01.010 Title and Purpose:

This title is known as the Coastal Zone Land Use Ordinance of the county of San Luis Obispo, Title 23 of the San Luis Obispo County Code. These regulations are hereby established and adopted to protect and promote the public health, safety and welfare, and more particularly:

- a. To implement the San Luis Obispo County General Plan and the San Luis Obispo County Local Coastal Program, and to guide and manage the future growth of the county in accordance with those plans; and*
- b. To regulate land use in a manner that will encourage and support the orderly development and beneficial use of lands within the county; and*
- c. To minimize adverse effects on the public resulting from the inappropriate creation, location, use or design of building sites, buildings, land uses, parking areas, or other forms of land development by providing appropriate standards for development; and*
- d. To protect and enhance the significant natural, historic, archeological and scenic resources within the county as identified by the county general plan.*
- e. To assist the public in identifying and understanding regulations affecting the development and use of land.*

CZLUO Section 23.05.039 states

23.05.039 Nuisance and Hazard Abatement:

Existing grading that has become hazardous to life or property is subject to Section 7004 of the Uniform Building Code. Any grading performed in violation of this section shall be deemed a nuisance, and full abatement and restoration may be required and an assessment of cost may be levied in accordance with Chapter 23.10 (Enforcement).

CZLUO Section 23.06.084 states:

23.06.084 Odors:

Any non-agricultural land use conducted in, or within one-half mile of an urban or village reserve line is to be so operated as not to emit matter causing noxious odors which are perceptible at the points of determination identified in the following table:



<i>Land Use Category in which odor-producing use is located</i>	<i>Point of determination</i>
<i>Residential, Office and Professional, Recreation, Commercial</i>	<i>At or beyond any lot line of the lot containing the use.</i>
<i>Industrial</i>	<i>At or beyond the boundary of the Industrial category.</i>

CZLUO Section 23.08.074 states in part:

23.08.074 Schools and Preschools: The provisions of this section apply to preschools and public and private schools providing instruction for preschool through 12th grade children; schools providing specialized education and training, where identified by the Land Use Element as S-4 uses; and to preschools and other facilities including individual homes, where day-care services are provided to more than six children.

a. Elementary and high schools.

(1) Limitation on use. Schools in the Office and Professional category are limited to high schools.

(2) Permit requirement. Per Table 3-A, Section 23.03.040 et. seq.

(3) Location. No closer than 1,000 feet to an Industrial or Commercial Service category.

...

3) Discussion

The LOCSD has intentionally sited the wastewater treatment facility in a central downtown location in order to meet the project's dual objective of providing the Los Osos Community with needed parks and open space areas. Careful consideration of the impacts of the treatment facility on surrounding land uses has been applied during project design and county review. To prevent the project from having a negative impact on adjacent development, the project employs odor and dust controls, and will as hazardous material containment precautions, as further discussed below.

The production of odors by the treatment system will be minimized by reducing the time under which organic materials decompose prior to treatment through relatively rapid delivery of wastewater from the



collection system to the treatment plant³. In addition, the Los Osos climate and the aerobic treatment process will avoid elevated temperatures, which can increase odor generation. To prevent any odors that are generated from being discharged in a manner that could adversely impact surrounding development, the treatment system will be enclosed within structures and maintained under negative air pressure, so that outside air is drawn into the facilities and the leakage of odors prevented. Air from the treatment areas will be collected and conveyed to odor scrubbing units consisting of biofilters and carbon filters before being discharged to the atmosphere. Concerns regarding the effectiveness of these odor controls have been reviewed with the San Luis Obispo County Air Pollution Control Board, and are further addressed by County conditions of approval 44 and 45.

With respect to concerns regarding health and safety, it is important to note that the wastewater facility is intended to address RWQCB concerns regarding the health and safety problems associated with existing septic systems. Other than the wastewater generated by existing and future development, only a small amount of hazardous materials will be contained at the treatment plant: diesel fuel for the back-up generator and chemicals associated with the treatment process. The County's review states that the volume of these materials will be similar or less than that stored at service stations, hardware stores and other businesses located in the nearby commercial area. A Hazardous Materials Management Plan is a standard requirement for this use and is covered by County conditions of approval number 51.

With these measures, the contentions of appeal do not raise a substantial issue with respect to the cited sections of the CZLUO, for the following reasons:

CZLUO Section 23.01.010: This ordinance introduces the purpose of San Luis Obispo Title 23, and does not establish specific standards for development. The general concern regarding land use compatibility expressed by the appellants' reference to this section is addressed above.

CZLUO Section 23.05.039: This ordinance addresses hazardous conditions created by previous grading activities, which is not an issue at the proposed treatment site. Appellant's concerns regarding noise and dust are addressed by County conditions 42 and 46-50.

CZLUO Section 23.06.084: The treatment plant includes measures to prevent the creation of odor problems, as discussed above.

CZLUO 23.08.074: Appellants contend that the construction of the wastewater treatment facility violates the requirement that schools be located 1,000 feet away from areas designated for Industrial development. This ordinance applies to the development of new schools, and is not applicable to the development of the proposed wastewater treatment system, which is located on a site designated for Public Facilities (as opposed to industrial uses).

³ According to the County's analysis, the estimated time to reach the treatment facility is not expected to exceed 6 hours depending upon the travel distance and the time of day.



4) Conclusion

The design and local approval of the Los Osos Treatment Facility includes measures to prevent odors and contain hazardous materials consistent with LCP requirements. The contentions of the appeal do not raise a substantial issue regarding the projects compliance with LCP land uses compatibility standards.

f. Hazards

1) Appellant' s Contentions

Appeal Contention 2.a.10: The treatment plant is a hazardous industrial facility that should be located outside of the urban reserve line, on a larger parcel of land that has adequate space to handle sewer sludge treatment needs. Relocating the treatment facility to a larger site would also enable future expansion. The proposed treatment plant site is limited by its size and drainage constraints to accommodate additional treatment and/or expansion that may be necessary to serve portions of the community outside of the septic tank prohibition zone in the future.

Appeal Contention 3.a.7: The project is inconsistent with CZLUO Section 23.06.120 – 126 regarding Toxic and Hazardous Materials, Explosives Storage, and Flammable and Combustible Liquids Storage, because explosives/flammables will need to be stored at the treatment site to provide emergency power, and due to the storage of large amounts of industrial chlorine and other toxics. Appellants raise concern regarding terrorist threats and adequate security, and question whether the required Health Department Permit has been obtained.

Appeal Contention 3.a.9: 23.07.084.c.4 requiring land use permit applications for development in a Geologic Study Area to be accompanied by a geology report that address liquefaction hazards. Appellants question whether the required report has been provided, and note the presence of an earthquake fault within one quarter of a mile of the treatment site.

Appeal Contention 3.c.8: The proposed disposal system will increase the potential for liquefaction, surface erosion, underground gullyng, groundwater mounding, and daylighting of effluent.

2) LCP Policies

Policy 1 for Hazards states in relevant part:

All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. ... [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD]

Policy 2 for Hazards states:

New development shall ensure structural stability while not creating or contributing to erosion or geologic instability. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.086 OF THE CZLUO.]



CZLUO Section 23.06.120 states:

23.06.120 Toxic and Hazardous Materials:

The storage and use of poisonous, corrosive, explosive and other materials hazardous to life or property are subject to the following standards, where applicable. The standards of these sections are in addition to all applicable state and federal standards, including but not limited to any regulations administered by the County Health Department, Fire Department, Sheriff's Office, Agricultural Commissioner, and Air Pollution Control District. In the event any standards of this chapter conflict with regulations administered by other federal, state, or county agencies, the most restrictive standards apply.

CZLUO Section 23.06.124 states:

23.06.124 Explosives Storage:

The storage of explosives is allowed only for the purpose of sales by a licensed vendor, or where the explosives will be used on the same site as the storage facility, as provided in this section.

...

CZLUO Section 23.06.126 states:

23.06.126 Flammable and Combustible Liquids Storage:

Any storage of flammable or combustible liquids (those with flash points below 140oF) is subject to the following standards:

a. Permit requirements:

(1) Health Department permit. Facilities used for the underground storage of hazardous substances, including but not limited to gasoline and diesel fuel, are subject to the permit requirements of Chapter 8.14 of this code.

(2) Land use permit. No land use permit is required for the storage of flammable or combustible liquids, except that where the quantity stored exceeds the limitations specified in subsection c. of this section, Minor Use Permit approval is required unless the land use involving the storage of flammable or combustible liquids would otherwise be required by this title to have Development Plan approval.

b. Limitation on use: The storage of flammable or combustible liquids for sale is allowed only in the Recreation, Commercial or Industrial categories, unless authorized by Development Plan approval.

c. Limitations on quantity: The quantity of flammable or combustible liquids stored on a site is to be limited as follows:



(1) Residential areas: Five gallons, unless authorized through Development Plan approval. Excluded from this requirement are the storage of flammable liquids:

(i) In the fuel tanks of self-propelled vehicles, mobile power or heat generators or any other equipment that is accessory to the principal use of the site;

(ii) For domestic space heating, cooking or similar purposes, provided that such storage containers and appliances shall satisfy all applicable county and state construction and safety regulations;

(iii) The storage or use of paints, oils, varnishes or similar flammable or combustible mixtures when such liquids are stored for maintenance, painting or similar purposes.

(2) Other areas: Storage is to be limited to the following quantities on any single building site, unless greater quantities are authorized through Development Plan or Minor Use Permit approval:

<i>Quantity Allowed (Gallons)</i>		
<i>Type of Liquid</i>	<i>Type of Storage</i>	
	<i>Aboveground</i>	<i>Underground</i>
<i>Combustible</i>	<i>20,000</i>	<i>Unlimited</i>
<i>Flammable</i>	<i>2,000</i>	<i>20,000</i>

d. Setbacks: Aboveground storage facilities for flammable or combustible liquids are to be set back a minimum of 50 feet from any property line or residential use.

e. Additional standards:

(1) All storage of bulk flammable liquids within an urban or village reserve line is to be underground, except:

(i) As specified by Subsection c(1) of this section;

(ii) Where a petroleum refining or related industrial use is authorized in an Industrial category pursuant to Section 23.08.120b (Miscellaneous Special Uses);

(iii) Where an automobile service station or other approved vendor of flammable liquids stores such liquids for sale in approved quantities and



containers.

(iv) Where a public agency maintains a corporation yard or other approved service facility in a Public Facilities or Industrial category, and such storage is authorized through Minor Use Permit.

(v) In a Commercial Service or Industrial land use category where authorized through Minor Use Permit.

(2) All aboveground storage of flammable and combustible liquids is to be within types of containers approved by the county fire chief.

CZLUO Section 23.07.084 states:

23.07.084 Application Content - Geologic and Soils Report Required:

All land use permit applications for projects located within a Geologic Study Area (except those exempted by Section 23.07.082) shall be accompanied by a report prepared by a certified engineering geologist and/or registered civil engineer (as to soils engineering), as appropriate. The report shall identify, describe and illustrate, where applicable, potential hazard of surface fault rupture, seismic shaking, liquefaction or landslide, as provided by this section. Provided, however, that no report is required for an application located in an area for which the County Engineer determines that sufficient information exists because of previous geology or soils reports. Where required, a geology report shall include:

- a. A review of the local and regional seismic and other geological conditions that may significantly affect the proposed use.*
- b. An assessment of conditions on or near the site that would contribute to the potential for the damage of a proposed use from a seismic or other geological event, or the potential for a new use to create adverse effects upon existing uses because of identified geologic hazards. The conditions assessed are to include, where applicable, rainfall, soils, slopes, water table, bedrock geology, and any other substrate conditions that may affect seismic response, landslide risk or liquefaction potential.*
- c. Conclusions and recommendations regarding the potential for, where applicable:*
 - (1) Surface rupture or other secondary ground effects of seismic activity at the site;*
 - (2) Active landsliding or slope failure;*
 - (3) Adverse groundwater conditions;*
 - (4) Liquefaction hazards.*
- d. Recommended building techniques, site preparation measures, or setbacks necessary to*



reduce risks to life and property from seismic damage, landslide, groundwater and liquefaction to insignificant levels.

3) Discussion

Appellants contend that the proposed wastewater treatment plan is a hazardous industrial facility. As discussed in the preceding finding, the plant is not a “hazardous industrial facility” as that term is generally understood (e.g., a petroleum refinery). The wastewater treatment plant is a Public Facility, required by the RWQCB in order to address a health and safety problem associated with existing septic systems. The Commission established a wastewater treatment system as an allowable use on the proposed site when it certified LCP Amendment 3-01. No substantial issue is raised by the appellant’s characterization of the treatment plant as a hazardous industrial facility.

Also addressed in the finding regarding land use compatibility are the appellants’ concerns regarding the storage of hazardous materials. Section 23.06.124 regulating the storage of explosives is not applicable – the treatment plant will not be storing any explosives. The plant will be storing diesel fuel to power an emergency generator. Accordingly, the County’s approval requires a fire safety plan, pursuant to the requirements of ordinance Section 23.06.126.

Appellants’ are also concerned about hazards associated with sludge disposal. According to the County’s analysis, there is nothing inherent in the sludge produced from the wastewater treatment process that would result in it being classified as a hazardous material (i.e., a substance that has an excessively low or high pH, heavy metals, or toxic chemical above thresholds established by the EPA). Since Los Osos is a primarily residential community with some commercial establishments and virtually no industry, the County concluded that it is extremely unlikely that hazardous materials will be found within the wastewater or sludge. In the unlikely instance there was such materials, the hazards associated with the trucking of sludge would be no different than the ongoing hazards associated with the transportation and disposal of septage from septic tanks.

With respect to geologic concerns, the project is not located within the Geologic Study Area, and the requirements of CZLUO Section 23.07.084 therefore do not apply. Nevertheless, the project has undergone a thorough review of geologic stability and seismic safety issues. The project EIR notes the inferred presence of a strand of the Los Osos fault on the east side of the Tri-W site due to the different groundwater levels between the east and west sides of the community. Sub-surface investigations did not, however, identify the presence of a fault, or any surface displacement that would indicate the presence of an active fault. Conditions 29-32 of the County approval address seismic safety issues.

Finally, with regard to appellants’ concerns regarding the impact of subsurface disposal of treated wastewater on geologic stability (e.g., increased liquefaction potential), a liquefaction analysis of the various disposal sites was conducted as part of the project EIR. This analysis concluded that liquefaction potential would generally be no different than present conditions once the septic systems cease operation and the disposal leach fields are installed. Similarly, a technical analysis of the potential for treated wastewater disposal to result in groundwater mounding or daylighting (i.e., seepage to the surface particularly in hillside areas) was performed. The LOCSD used this modeling effort to



determine the location of monitoring and harvesting wells that will be used to track and manage groundwater levels and avoid such impacts.

4) Conclusion

The proposed wastewater treatment plant is an allowable use on the Tri-W site, and has been designed and conditioned in a manner that will avoid hazards to the public. Appellants' contentions do not raise a substantial issue regarding the project's conformance to LCP hazard standards.

g. Access and Recreation

1) Appellant's Contentions

Appeal Contentions 2.b5 and 2.d.3: Sewer plants amenities have been stripped from the current proposal at 90% design. The previously proposed retention pond, that was to be available for public uses park and open space, is now a detention basin that will retain storm water, be used as a sewage overflow holding area, and surrounded by a chain link fence. Other amenities that have been removed from the plan include Riparian, Demonstration, Water, and Community Garden/s; Court Yard and Amphitheater; CSD Offices; Picnic Area and Tot Lot; Parking and Drop off areas; and regulation soccer field. Appellants questions the public's ability to use and enjoy the open space Multi-Use Area, which doubles as a 15 foot deep retention basin, due to periodic covering with storm water, and the lack of stairs, ramps, handrails, parking, restrooms and facilities for the disabled. The Dog Park has been reduced in size from 1 acre to 0.6 acres.

Appeal Contention 3.a.5: The project is inconsistent with CZLUO Section 23.04.160-170 regarding Parking, because there is inadequate parking (and public restrooms) to serve visitors to the dog park and sewer.

Appeal Contention 2.a.13 and 3.b.16: The construction of the wastewater treatment infrastructure, and the buildout of the community that will be facilitated by the treatment facility, will result in polluted runoff and interrupted traffic circulation.

Appeal Contention 2.d.4 and 3.b.11: The classification and moisture content of sewage sludge has changed, which will result in tripling the sludge truck traffic through downtown Los Osos.

2) LCP Policies

CZLUO Section 23.04.160 states:

23.04.160 Parking and Loading:

Parking and loading standards are intended to: Minimize street congestion and traffic hazards; provide safe and convenient access to businesses, public services, and places of public assembly; and to make the appearance of parking areas more compatible with surrounding land uses. Parking and loading standards are in the following sections:



23.04.162	<i>Off-Street Parking Required</i>
23.04.163	<i>Location of Parking on a Site</i>
23.04.164	<i>Parking Design Standards</i>
23.04.166	<i>Require Number of Parking Spaces</i>
23.04.168	<i>Parking Lot Construction Standards</i>
23.04.170	<i>Off-Site Parking</i>
23.04.172	<i>Off-Street Loading Requirements</i>
23.04.178	<i>Drive-In and Drive-Through Facilities</i>

CZLUO Section 23.04.166 states:

23.04.166 Required Number of Parking Spaces:

All land uses requiring a permit under this Title shall be provided off-street parking spaces as follows:

a. Use of charts: The charts in subsection c of this section determine the number of parking spaces required for each use of land, as follows:

(1) Uses not listed: For uses not specifically listed in this subsection that do not have parking requirements set by Chapter 23.08 (Special Uses), the same parking and loading space is required as for the most similar use of equivalent intensity; except where a use not listed requires Development Plan approval, in which case the amount of parking and loading space required is to be as determined by the Planning Commission. ...

To address traffic impacts, LCP Amendment 3-01 incorporated the Traffic Mitigation Measures of the Final EIR, which are attached to this report as Exhibit 4.

3) Discussion

As detailed in the adopted findings for LCP Amendment 3-01, the development of a wastewater treatment facility is essential to protect the water quality of Morro Bay, and is therefore essential to the protection of water-oriented access and recreation opportunities. Thus, the proposed project will have a beneficial impact on coastal access and recreation opportunities.

Appellants' contentions regarding public access and recreation, relate to changes in the project since the Commission's approval of LCP Amendment 3-01, addressed in previous findings of this report. Appellants are also concerned that there are not adequate parking or restroom facilities to accommodate public use of the parks and open space areas to be provided at the treatment plant site.

The CZLUO parking standards do not establish a specific parking requirement for public parks and open space uses. Thus, in accordance with CZLUO Section 23.04.166a(1), the required amount of parking is to be reviewed as part of the Development Plan review. In accordance with this procedure, the County review considered public parking needs, and conditioned the project to provide 11 spaces along Ravena



Street. There is no LCP requirement for public parks and open space to provide public restrooms. Retaining over 8 acres of the site as open space provide ample opportunity for the LOCSD to provide additional parking and public facilities in the future, if such demands arise.

With respects to concerns regarding traffic impacts, County condition of approval number 38 requires the LOCSD to prepare and implement a construction management plan in accordance with the EIR mitigation measures that were incorporated into the Estero Area Plan via LCP Amendment 3-01. This will minimize the temporary impacts to coastal access and recreation opportunities caused by construction traffic. Appellants' remain concerned, however, about long-term traffic impacts associated the hauling of sludge generated by the treatment process. This issue was addressed during the County's review as follows:

Proposed sludge disposal was described in the Planning Commission staff report and the certified EIR. An extended aeration treatment plant serving the Prohibition Area would produce approximately 1,400 pounds of sludge per day. Although the moisture content of the sludge now proposed by the project is estimated to be 80 percent instead of 25 percent as provided in the final EIR, the impacts associated with its disposal are identical. Namely, sludge will be dewatered at the treatment plant and hauled offsite to approved sludge disposal sites. This would result in approximately 5-8 truck trips per week, which is slightly higher than what was analyzed in the EIR, but still insignificant.

Finally, appellants express concern about traffic impacts associated with the buildout of Los Osos facilitated by the construction of the wastewater treatment facility. These issues will be addressed by the Estero Area Plan Update and future project reviews.

4) Conclusion

The Los Osos Wastewater Treatment Facility will protect the water quality of Morro Bay, and thereby preserve coastal access and recreation opportunities. Concerns regarding the amount of public parking provided by the project, and its impact to local traffic and circulation patterns, do not raise a substantial issue regarding the project's compliance with LCP or Coastal Act access and recreation policies.

3. Appearance Issues

a. Appellant' s Contentions

Appeal Contention 1.a: The wastewater treatment plant will impact views of Morro Bay, particularly views of Morro Rock from Los Osos Valley Road

Appeal Contention 2.a.2 and 3.b.6: The treatment plant buildings range from 35 to 38 feet in height, inconsistent with the neighborhood scale, and will obstruct views of Morro Bay. This also conflicts with the project description contained in the Environmental Impact Report (EIR), describing the treatment facility as a buried plant with approximately three quarters of the facility being located below grade. Actual visual impacts will interfere with the public viewshed, in violation of the Coastal Act.



Treatment Plant buildings will obstruct scenic views of Morro Bay, Morro Rock, and the Irish Hills. Grading of the treatment site will result in landform and viewshed alterations that are incompatible with the neighborhood character.

Appeal Contention 2.c: the design of the project approved by the County is different from the project presented to the Commission during the August 2002 hearing on the LCP amendment for the following reasons:

1. "The sewer plant no longer meets the project description as defined in the Final Environmental Impact Report (FEIR) as "buried," "roof tops only," and "below (or at) grade." The Wastewater Facilities Project (WFP) report page 4-13 described, "The solids processing facilities would consist of a two story building." The building currently, at ninety percent design, proposed is thirty-eight feet tall, equivalent [to] three stories. It is also described; "the estimated size of the building is 40 ft. by 100 ft." when the current ninety percent proposal has the building at 121 ft. by 89 ft."
2. "The proposed buildings have changed since the August 8, 2002, LCP Amendment. Some larger, some smaller, some removed, all renamed, and all are at a higher elevation than approved at that time. For example, one of thirty-seven recommended changes by Boyle engineering during the value engineering process and adopted by the LOCSD board on June 19, 2003, eliminated the cost of hauling a portion of the 196,000 cubic yards of Tri-W soil away and saving an estimated \$600,000. The soil will now serve as base under the sewer plant, raising the entire courtyard and buildings a full three feet above the current grade, which raises additional erosion and sedimentation concerns as well as adding to the overall height of the project, further obstructing the view of Morro Bay."
3. Maintenance requirements on top of the aeration basin "including workmen, machinery, and equipment, will be visible from homes south of the facility, upslope from the site. This activity is inconsistent with the "park like" promise of the district at the LCP amendment approval. CCLO questions the aesthetics of the area atop the aeration basin; what material (lawn, gravel, concrete) will this be covered with and how will it be maintained?"
4. Newly identified fencing details will increase the impact of the facility on public views of Morro Bay, Morro Rock, and the Morro Bay Sandspit and Estuary.

b. LCP Visual Resource Policies

LCP Policy 1 for Visual and Scenic Resources states:

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

LCP Policy 2 for Visual and Scenic Resources states:



Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

LCP Policy 5 for Visual and Scenic Resources states:

Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with the adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]

LCP Policy 7 for Visual and Scenic Resources states:

The location and design of new development shall minimize the need for tree removal. When trees must be removed to accommodate new development or because they are determined to be a safety hazard, the site is to be replanted with similar species or other species which are reflective of the community character. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.064 OF THE CZLUO.]

CZLUO Section 23.05.034 states in part:

23.05.034 Grading Standards:

All excavations and fills, whether or not subject to the permit requirements of this title, shall be conducted in accordance with the provisions of Sections 7009 through 7013 of the Uniform Building Code, and the following standards:

- a. Area of cuts and fills: Cuts and fills shall be limited to the minimum amount necessary to provide stable embankments for required parking areas or street rights-of-way, structural foundations, and adequate residential yard area or outdoor storage or sales area incidental to a non-residential use.*
- b. Grading for siting of new development. Grading for the purpose of creating a site for a structure or other development shall be limited to slopes less than 20% except:*
...
- c. Grading adjacent to Environmentally Sensitive Habitats. Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat as shown in the Land Use Element except:*
...
- d. Landform alterations within public view corridors. Grading, vegetation removal and other*



landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridors from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.

- e. Final contours: Contours, elevations and shapes of finished surfaces are to be blended with adjacent natural terrain to achieve a consistent grade and natural appearance. Border of cut slopes and fills are to be rounded off to a minimum radius of five feet to blend with the natural terrain.*
- f. Grading near watercourses: Grading, dredging or diking (consistent with Section 23.07.174) shall not alter any intermittent or perennial stream, or natural body of water shown on any USGS 7-1/2 minute map, except as permitted through approval of a county drainage plan and a streambed alteration permit from the California Department of Fish and Game issued under Sections 1601 or 1602 of the Fish and Game Code. ...*
- g. Revegetation: Where natural vegetation has been removed through grading in areas not affected by the landscape requirements (Section 23.04.180 et seq. Landscape, Screening and Fencing), and that are not to be occupied by structures, such areas are to be replanted as set forth in this subsection to prevent erosion after construction activities are completed. [Amended 1993, Ord. 2649]*
 - (1) Preparation for revegetation: Topsoil removed from the surface in preparation for grading and construction is to be stored on or near the site and protected from erosion while grading operations are underway, provided that such storage may not be located where it would cause suffocation of root systems of trees intended to be preserved. After completion of such grading, topsoil is to be restored to exposed cut and fill embankments or building pads to provide a suitable base for seeding and planting.*
 - (2) Methods of revegetation: Acceptable methods of revegetation include hydro-mulching, or the planting of rye grass, barley or other seed with equivalent germination rates. Where lawn or turf grass is to be established, lawn grass seed or other appropriate landscape cover is to be sown at not less than four pounds to each 1,000 square feet of land area. Other revegetation methods offering equivalent protection may be approved by the Building Official. Plant materials shall be watered at intervals sufficient to assure survival and growth. Native plant materials are encouraged to reduce irrigation demands. Where riparian vegetation has been removed, riparian plant species shall be used for revegetation.*
 - (3) Timing of revegetation measures: Permanent revegetation or landscaping should begin on the construction site as soon as practical and shall begin no later than six months after achieving final grades and utility emplacements.*

CZLUO Section 23.05.064 states:



23.05.064 Tree Removal Standards.

Applications for tree removal in accordance with Section 23.05.062 are to be approved only when the following conditions are satisfied:

- a. Tagging required. Trees proposed for removal shall be identified for field inspection by means of flagging, staking, paint spotting or other means readily visible but not detrimental to a healthy tree.*
- b. Removal criteria. A tree may be removed only when the tree is any of the following:*
 - (1) Dead, diseased beyond reclamation, or hazardous;*
 - (2) Crowded, with good horticultural practices dictating thinning;*
 - (3) Interfering with existing utilities, structures or right-of-way improvements;*
 - (4) Obstructing existing or proposed improvements that cannot be reasonably designed to avoid the need for tree removal;*
 - (5) Inhibiting sunlight needed for either active or passive solar heating or cooling, and the building or solar collectors cannot be oriented to collect sufficient sunlight without total removal of the tree;*
 - (6) In conflict with an approved fire safety plan where required by Section 23.05.080;*
 - (7) To be replaced by a tree that will provide equal or better shade, screening, solar efficiency or visual amenity within a 10 year period, as verified in writing by a registered landscape architect, licensed landscaping contractor or certified nurseryman.*
- c. Replacement. Any tree removed to accommodate new development or because it is a safety hazard shall be replaced, in a location on the site and with a species common to the community, as approved by the Planning Director.*
- d. Tree removal within public view corridors. Tree removal within public view corridors (areas visible from collector or arterial roads) shall be minimized in accordance with Visual and Scenic Resources Policy 5.*
- e. Preservation of trees and natural vegetation. New development shall incorporate design techniques and methods that minimize the need for tree removal.*



Visual resource protection standards for the development of a wastewater treatment plant on the Tri-W site that were incorporated into the Estero Area Plan by LCP Amendment 3-01 are attached to this report as Exhibit 4. Another applicable policy of the Estero Area Plan is Standard 8 for the Morro Palisades site, which states:

Planned Development. The portion of the property north of Los Osos Valley Road shall be developed as a planned development to allow for a variety of housing types and densities, commercial public facilities, office and professional uses to be located in the least sensitive portions of the site and the most sensitive portions retained as open space/recreation use as determined by the planned development review. The adopted Development Plan shall be revised to incorporate the provisions of the LUE.

c. Discussion

As previously described, the development of a wastewater treatment facility was established as an allowable use on the Tri-W site pursuant to LCP Amendment 3-01. Visual impacts were not a major issue at that time, among other reasons because the amendment submittal included a requirement that “the final design and construction plans for the park and treatment plant shall be consistent with relevant visual resource protection policies and standards of the San Luis Obispo County General Plan, Estero Area Plan, Coastal Zone Framework for Planning, and the Agriculture and Open Space Element” (Project EIR Visual Resource Mitigation Measure AES-2).

Appellants allege that the County approved project violates LCP Visual and Scenic Resource protection standards because the project will impacts scenic coastal views, remove trees, and involve extensive landform alterations. The applicable LCP standards, cited above, apply to public views (e.g., views from roadways), as opposed to private views (e.g., views from residences). Application of the above policies must also take into consideration of the hierarchical organization of the LCP; where there is a conflict between the standards of the Area Plans, Zoning Ordinance, and Coastal Plan Policies, the LCP provides that the Area Plan standards control (Coastal Zone Framework for Planning, page 8-3). Within this context, the Estero Area Plan authorizes a range of development types on the Tri-W site, provided that they are located on the least sensitive portions of the site, and designed and reviewed on a comprehensive, rather than project-by-project, basis. Thus, it would be improper to interpret LCP visual protection policies and ordinances as prohibiting future development of the Tri-W site due to the presence of scenic views.

The primary public views affected by the treatment plant are views from Los Osos Valley Road looking north, and from Palisades Avenue, looking southwest. A computer simulation of the impact of the facility of public views from selected points of these roads has been prepared by the LOCSO, and is attached to this report as Exhibit 5. In addition to these visual simulations, the Exhibit addresses changes to the site plan and building configurations since August 2002, which, as discussed previously in this report, will not resulted in any changes to the visual impacts of the wastewater treatment facility.

As illustrated by Exhibit 5, the impact of the locally approved project on public views will not be significant. Southwesterly views from Palisades Avenue of the Irish Hills will be only slightly modified



by the removal of Eucalyptus trees and the installation of a bike path. Northwesterly views of Morro Rock and Morro Bay from the intersection of Los Osos Valley Road and Palisades Avenue will be altered by the replacement of scrub vegetation with turf for the multi-use area, and by the removal of eucalyptus trees, but there will be no diminution of bay views or views of the rock. The most noticeable visual change will occur to the north and northeast views from Los Osos Road, where berming, visual screening walls, rooftops and changes in vegetation types will be seen. These changes will not, however, impact views of Morro Rock or Morro Bay. Removal of Eucalyptus trees will open up views of Morro Rock from the northeasterly perspective.

The project has minimized visual impacts by establishing a low building pad elevation for treatment buildings, so the height of the buildings will be no taller than 15 feet from the elevation of Los Osos Valley Road; constructing the aeration basin underground; planting native vegetation to screen the facility and enhance the scenic attributes of the site; and, installing screening walls shaped in the form of waves and colored to be compatible with the surrounding environment. County conditions of approval intended to ensure that the wastewater treatment facility does not adversely impact coastal views include condition numbers 56-61 (see Exhibit 1).

With these measures, the appeals do not raise a substantial issue of project conformance with the LCP visual resources protection provisions cited above, for the following reasons:

Policy 1 for Visual and Scenic Resources: The treatment facilities will not impact the unique and attractive features of the landscape, such as views of Morro Rock, Morro Bay, and the Irish Hills. As previously discussed, LCP Amendment 3-01 determined that the removal of ESHA on the Tri-W site to accommodate the treatment plant and ancillary facilities was, on balance, more protective of coastal resources given the essential need for a sewer system to protect water quality, marine habitats, and other coastal resources and access and recreation opportunities.

Policy 2 for Visual and Scenic Resources: The treatment plant has been located and designed to avoid impacts to scenic views of Morro Rock, Morro Bay, and the Irish Hills. In accordance with Policy 2, the treatment plant minimizes visual intrusion by locating portions of the facility underground, establishing a low elevation building pad, and using slopes (berms) to shield the development from public view.

Policy 5 for Visual and Scenic Resources and CZLUO Section 25.05.034a-f: Although the project involves extensive grading, earthmoving has been limited to that which is necessary to construct the project, in a manner that minimizes impacts to public views. Finished site contours will blend with the adjacent terrain to achieve a natural appearance. Vegetation removal is necessary to accommodate the project, and there will be temporary visual impact that will be offset by project landscaping. No grading near watercourses will take place. Grading within ESHA is addressed by previous findings that reference the Commission's action on LCP Amendment 3-01.

Policy 7 for Visual and Scenic Resources and Sections 23.05.034g and 23.05.064 of the CZLUO: Tree removal has been limited to that which is necessary to accommodate the development of the wastewater treatment plant and the ancillary facilities allowed by LCP Amendment 3-01. The County's approval



found to project to be consistent with these requirements as follows:

A tree removal plan has been submitted as part of the application materials. The treatment plant site has 53 mature and numerous smaller eucalyptus trees (see Tree Removal Plan). All of these will be removed for the construction of the treatment plant and storm water facilities. The preliminary landscape plan proposes to replace these trees with a comprehensive replanting of the site, with almost 100 trees throughout the 11 acres. The Broderson leach fields will require the removal of 42 mature eucalyptus trees. These will be replaced with native coastal sage scrub plantings in order to comply with Habitat Conservation Plan conditions. The Monterey Pine will remain. The project will be further conditioned to ensure that the removal of trees does not disturb raptor nesting. None of these trees have been identified as important roosting sites for Monarch butterflies.

In accordance with the above finding, County Condition 60 requires the landscaping plan for the Tri-W site to include sufficient planting to screen views of the project from nearby roads and residential developments, with an emphasis on the use of native plant materials. The goal of the landscaping plan is to create a park like setting, while preserving and enhancing existing views. Condition 61 requires the use of a variety of evergreen trees around the perimeter of the treatment facility that will reach a minimum height of 25 feet within 5 years to ensure effective screening. Palm trees, Italian Cypress, and other distinctly shaped non-native trees are expressly prohibited. Condition 64 requires pre-construction surveys for nesting raptors. Where raptor nests are discovered, a 500-foot no-disturbance buffer will be established until the nesting activity is completed and the young have fledged. Conditions 23 – 25 of the County approval require hydro seeding and revegetation of disturbed areas in accordance with CZLUO Section 23.05.034g.

Visual Mitigation Measures identified by the project EIR and required by LCP Amendment 3-01: These mitigation measures are effectively implemented by the County approval as follows. Condition 59 requires construction staging areas to be located away from sensitive viewing areas, and construction storage areas to be outside sensitive view corridors, in accordance with Mitigation Measure AES-1. The treatment plant has been sited and designed to conform to County development standards, as evidenced by the County's findings of approval and the above analysis, in accordance with Mitigation Measure AES-2. Condition 60 requires a landscape plans that satisfies the requirements of Mitigation Measure AES-3. Condition 65d requires restoration of the Broderson percolation field in accordance with Mitigation Measure AES-4. Finally, Condition 57 carries out the requirements for a lighting plan, as established by Mitigation Measure AES-5.

Estero Area Plan Standard 8: The project provides a comprehensive development plan for the Tri-W site that orients the treatment facility to avoid sensitive view corridors and retains over 8 of the 11 acres for open space and public recreation.



d. Conclusion

The Los Osos wastewater treatment project has been sited and designed to avoid and minimize impacts on coastal views. As conditioned by the County, the project will provide landscaping, habitat restoration, visual screening of the treatment facility, and other visual resource protection measures that will preserve views of scenic coastal areas. Therefore, the contentions of the appeal do not raise a substantial issue regarding the project's conformance to LCP visual and scenic resource protection standards.

4. Service Area and Capacity Issues

a. Appellant's Contentions

Appeal Content 2.d.2: According to a November 6, 2003 study, there are problems with the ability of the primary site for treated wastewater disposal to accommodate expected volumes. This study indicates that areas outside of the septic tank prohibition area are contributing to groundwater nitrate problems and will require sewer service in the future.

Appeal Contention 3.a.10: The project is inconsistent with CZLUO Section 23.04.430 a and b requiring adequate water and sewage disposal capacity for proposed development, because there is inadequate potable water supplies available for sewer workers and for the buildout of the community.

b. LCP Policies

LCP Policy 2 for Public Works states:

New or expanded public works facilities shall be designed to accommodate but not exceed the needs generated by projected development within the designated urban reserve lines. Other special contractual agreements to serve public facilities and public recreation areas beyond the urban reserve line may be found appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.430 OF THE CZLUO.]

CZLUO Section 23.04.430 states:

23.04.430 Availability of Water Supply and Sewage Disposal Services.

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:

- a. A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of*



available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently-vacant parcels within the urban services line.

- b. Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.*

c. Discussion

A primary purpose of Public Works Policy 2 is to ensure that the development of public works facilities does not induce growth beyond what can be supported by the area consistent with the protection of coastal resources. To prevent such impacts, the capacity of new or expanded public works facilities must be limited to that which is necessary to serve the maximum buildout of the urban area (i.e., the areas within the Urban Reserve Line) allowed by the LCP. In addition, the service area must be limited to portions of the community within the Urban Services Line. Properties between the Urban Services Line and Urban Reserve Line are not eligible to receive urban services until such a time that the LCP has been amended to include such properties within the Urban Services Line. In this way, public works facilities can be sized to accommodate full buildout within the Urban Reserve Lines, but expansion of such services beyond the Urban Service Lines can only take place after the Coastal Commission has approved such expansions as being consistent with the Coastal Act.

The population of Los Osos in 2000 was estimated by the County to be 14,406, and according to Table B, on page 2-3 of the adopted Estero Area Plan, has a maximum buildout capacity of 28,688 under current land use designations. Additional planning and constraints analyses that have taken place since the adoption of the Estero Area Plan in 1988 indicates that such a buildout level would not be consistent with the protection of coastal resources. Accordingly, the draft Estero Area Plan Update identifies a buildout level of 19,601 for Los Osos.

The Los Osos Wastewater Treatment Facility has been sized to accommodate a buildout population of 19,200, which is less than the maximum buildout allowed under either the existing Estero Area Plan or the draft update. The wastewater treatment service area, which is co-terminus with the RWQCB discharge prohibition zone, is within the Urban Services Line. Thus, the project will not induce growth beyond that which is allowed by the LCP, and complies with Public Works Policy 2.

Appellants' contentions regarding the project's service capacity and service area are not related to growth inducement issues. Rather, their concerns are that the treatment plant site does not have adequate room to expand, as may be necessary to serve a larger service area. These concerns are based on a 2003 study that indicates areas outside of the septic tank prohibition area are contributing to groundwater nitrate problems and will require sewer service in the future.

The RWQCB has been closely monitoring the groundwater nitrate problem and has worked closely with



the LOCSD to design a project that will effectively address this problem. The RWQCB has analyzed the report referenced by the appellants and determined that its conclusions were not scientifically supported due to inaccurate input data and incorrect assumptions. Limiting treatment service to the prohibition area, and implementing a Septic System Maintenance and Management Program for the remainder of the urban area, when combined with other development standards, will provide for effective water quality protection while avoiding growth-inducing impacts.

The other contention regarding public service capacities challenges the project's consistency with CZLUO Section 23.04.430 due to the lack of water available to serve the treatment workers and the community buildout to be served by the treatment system. Los Osos is indeed faced with water supply challenges, related to the long-term sustainability and safe-yield of its groundwater basin. The wastewater treatment project is a critical component to addressing these needs, both in terms of protecting groundwater quality, and providing for the recharge of the groundwater basin. The amount of water that will be used by the treatment plant workers is insignificant in comparison to the larger role that the project plays in protecting the community's water supply. Managing buildout and groundwater withdrawals to maintain a sustainable water supply is a parallel need that is being addressed by LOCSD's groundwater management planning efforts and the Estero Area Plan Update.

d. Conclusion

The capacity and service area of the wastewater treatment facility is within the extent and location of urban development authorized by the LCP, and according to the RWQCB, adequate to address groundwater pollution problems. The project is an essential component to protecting the quality and quantity of water available to support existing and future development. Thus, appellants' contentions do not raise a substantial issue regarding the project's consistency with LCP public works provisions.

D. Substantial Issue Conclusion

1. Coastal Act Policies:

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:



1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

2. Discussion:

The appeals have raised a number of concerns, each of which has been responded to in the preceding findings of this report. Both individually and as a whole, the appeals do not raise a substantial issue regarding the project's conformance with the certified LCP, under the factors that guide the Commission in making Substantial Issue determinations:

1. San Luis Obispo County's determination that the Los Osos Wastewater Treatment Project is consistent with the certified LCP and with the public access policies of the Coastal Act is supported by adequate information and analyses. The County has undertaken a thorough review of the relevant LCP and Coastal Act issues, as documented by the local record and referenced in the findings of this staff report. The record adequately addresses the contentions of the appeal that are relevant to the coastal development permit, and provides a sufficient basis for the Commission to determine that no substantial issue exists regarding the project's consistency with the certified LCP.
2. The Los Osos Wastewater Treatment Project, as a major public works facility that involves the entire South Bay Urban Area, is of significant scope and extent, both in terms of the geographic area affected and the range of impacts associated with its development and operation. From a Coastal Act and LCP perspective, the scope and extent of the project is particularly significant due to the important coastal protection needs the project will be serving. This includes protection of coastal water quality, marine habitats, coastal dependent uses (e.g., oyster farming), and water-oriented recreational opportunities. The extent and scope of coastal resource protection provided by the project outweigh the extent and scope of the issues raised by the appeals.
3. As approved by San Luis Obispo County, the only significant adverse impact to coastal resources that will result from the construction and operation of the Los Osos Wastewater Treatment Facility is the loss of environmentally sensitive habitat areas on the treatment plant site. This impact was



acknowledged and addressed when the Commission approved LCP Amendment 3-01. In that approval, the Commission found that constructing a wastewater treatment plant which protects the water quality and marine habitats of the Morro Bay National Estuary is, on balance, more protective of coastal resources than requiring protection of the habitat contained on the treatment plant site.

4. The County approval is specific to the wastewater treatment needs of Los Osos, and does not establish any adverse precedents that would affect future interpretations of the LCP.

5. The contentions of the appeal raise issues that are of both local and statewide importance. The most significant statewide issues - protection of the Morro Bay Estuary and the unique habitats of Los Osos – are adequately addressed by the County’s review, as detailed in the findings of this report.

3. Conclusion:

Implementation of the Los Osos Wastewater Treatment Project is essential to protect the Morro Bay National Estuary and is therefore of critical statewide importance. Tremendous amounts of local and state resources have been dedicated towards addressing this need, over a period of more than 20 years, and environmental impacts and project alternatives have been thoroughly considered. The County’s approval of the LOCSD’s wastewater treatment project appropriately addresses this statewide need, and provides for the protection of coastal resources consistent with LCP requirements. As a result, and for the specific reasons detailed in the preceding findings of this staff report, the appeals of the County’s approval do not raise a substantial issue.

